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Tuesday, October 7, 1986

OPENING OF SESSION

At 9:57 a.m., the President, the Honorable Cecilia Muñoz Palma, opened the session.

THE PRESIDENT: The session is called to order.

NATIONAL ANTHEM

THE PRESIDENT: Everybody will please rise to sing the National Anthem.

Everybody rose to sing the National Anthem.

THE PRESIDENT: Everybody will please remain standing for the Prayer to be led by the Honorable Vicente B. Foz.

Everybody remained standing for the Prayer.

PRAYER

MR. FOZ: Lord
We have not forgotten
The common thread that binds the words
The object of the unwritten intent
of the unspoken goal
The happiness and prosperity of our people —
Teachers, students, youth, women, family
Workers, farmers, fishermen, businessmen
professionals
The poor, the weak, the unemployed
And generations yet unborn —
We have remembered them all in writing
a new fundamental law.
Lord, we pray that You, under whose light
we have drafted it will bless it
And our people whose interest has inspired
us to write it will ratify it

And let our nation move onward, forward. Amen.

ROLL CALL

THE PRESIDENT: The Secretary-General will call the roll.

THE SECRETARY-GENERAL, reading:

Abubakar

Present [*] Natividad Present [*]

Alonto Present [*] Nieva Present

Aquino Present [*] Nollado Present

Azcuna Present [*] Ople Present [*]

Bacani Present Padilla Present

Bengzon Present Quesada Present [*]

Bennagen Present Rama Present

Bernas Present Regalado Present

Rosario Braid Present Reyes de los Present

Calderon Present Rigos Present

Castro de Present Rodrigo Present

Colayco Present Romulo Present

Concepcion Present Rosales Absent

Davide Present [*] Sarmiento Present

Foz Present Suarez Present

Garcia Present [*] Sumulong Present

Gascon Present [*] Tadeo Present [*]

Guingona Present Tan Present [*]

Jamir Present Tingson Present [*]

Laurel Present [*] Treñas Present

Lerum Present [*] Uka Present

Maambong Present [*] Villacorta Present [*]

Monsod

Present Villegas Present [*]

The President is present.

The roll call shows 28 Members responded to the call.

THE PRESIDENT: The Chair declares the presence of a quorum.

MR. CALDERON: Madam President.

THE PRESIDENT: The Assistant Floor Leader is recognized.

MR. CALDERON: I move that we dispense with the reading of the Journal of yesterday's session.

THE PRESIDENT: Is there any objection? (Silence) The Chair hears none; the motion is approved.

APPROVAL OF JOURNAL

MR. CALDERON: Madam President, I move that we approve the Journal of yesterday's session.

THE PRESIDENT: Is there any objection? (Silence) The Chair hears none; the motion is approved.

MR. CALDERON: Madam President, I move that we proceed to the Reference of Business.

THE PRESIDENT: Is there any objection? (Silence) The Chair hears none; the motion is approved.

The Secretary-General will read the Reference of Business.

REFERENCE OF BUSINESS

The Secretary-General read the following Communications, the President making the corresponding references:

COMMUNICATIONS

Communication from Mr. Benjamin Ibrahim, President, Tausog, Samal, Yakan, Metro Manila Moslem Association, 151 Edward Ty Bldg., Quezon Avenue, Quezon City, pointing out twenty-one (21) disadvantages of removing the U.S. military bases in the Philippines, urging the Constitutional Commission to work for the retention of said bases even beyond 1991.

(Communication No. 1058 — Constitutional Commission of 1986)

To the Committee on Preamble, National Territory, and Declaration of Principles.

Letter from Mr. Antonio L. Garcia, Jr. of Matina Aplaya, Davao City, opposing any constitutional provision that would allow the teaching of religion in the public schools.

(Communication No. 1059 — Constitutional Commission of 1986)

To the Committee on Human Resources.

Telegram from one President Aberilla of Region XII Union of Cooperatives, expressing thanks to the Constitutional Commission for recognizing the role of cooperatives in national development.

(Communication No. 1060 — Constitutional Commission of 1986)

To the Archives.

Two communications urging the Constitutional Commission to incorporate in the Constitution the provision that the separation of Church and State shall be inviolable as embodied in the 1973 Constitution and as understood historically and jurisprudentially in the Philippines, to wit:

(1) Goliath Abetria and forty-four other members of the Philippine-Asian Missions, Inc. Bulan, Sorsogon.

(Communication No. 1061 — Constitutional Commission of 1986)

(2) Baltazar M. Pepico and ninety-eight (98) others, Pentecostal Assembly of God, Inc., Daro, Dumaguete City.

(Communication No. 1062 — Constitutional Commission of 1986)

To the Committee on Preamble, National Territory, and Declaration of Principles.

Seven telegrams and two letters, all opposing the inclusion of population provision in the new Constitution, to wit:

(1) Fr. Conrado Balagapo
Eastern Samar Diocese Family Life
Organizations in 26 parishes,
Borongan, Eastern Samar

(Communication No. 1063 — Constitutional Commission of 1986)

(2) Family Life of Jolo

(Communication No. 1064 — Constitutional Commission of 1986)

(3) Sr. Paciana Gandia of Lipa City

(Communication No. 1065 — Constitutional Commission of 1986)

(4) Sr. Pilar Go of Tagbilaran

(Communication No. 1066 — Constitutional Commission of 1986)

(5) Family Life Ministry
Archdiocese of Cotabato
Cotabato City

(Communication No. 1067 — Constitutional Commission of 1986)

(6) Concerned Citizens of Jolo

(Communication No. 1068 — Constitutional Commission of 1986)

(7) The Carmelite Sisters of Charity
Jolo, Sulu

(Communication No. 1069 — Constitutional Commission of 1986)

(8) Family Life Workers
Dipolog City

(Communication No. 1070 — Constitutional Commission of 1986)

(9) Sis. Lydia L. Mendoza
17-C Mabait St.
Teachers' Village, Quezon City

(Communication No. 1071 — Constitutional Commission of 1986)

To the Committee on Preamble, National Territory, and Declaration of Principles.

MR. RAMA: Madam President.

THE PRESIDENT: The Floor Leader is recognized.

MR. RAMA: I ask that Commissioner Guingona be recognized for an important information.

THE PRESIDENT: Commissioner Guingona is recognized.

MR. GUINGONA: Thank you, Madam President.

As manifested last Saturday, the Sponsorship Committee has requested our Computer Section to print about 50 copies of the Preamble and the articles of the draft Constitution which have been reviewed already by the Committees on Style and on Sponsorship. Sometime today, a number of articles beginning with the Article on National Territory up to perhaps the Articles on the Executive and the Preamble will be distributed to the Members so that they can already start reviewing the draft Constitution as reviewed by both the Committee on Style and the Committee on Sponsorship.

Thank you, Madam President.

CONSIDERATION OF PROPOSED RESOLUTION NO. 540

(Article on Transitory Provisions)

Continuation

PERIOD OF AMENDMENTS

MR. RAMA: Madam President, I move that we resume consideration of the Article on Transitory Provisions.

THE PRESIDENT: Is there any objection? (Silence) The Chair hears none; the motion is approved.

The honorable chairman and members of the Committee on Transitory Provisions will please occupy the front table.

MR. RAMA: Madam President, I ask that Commissioner Bernas be recognized to present his motion to delete.

THE PRESIDENT: Commissioner Bernas is recognized.

FR. BERNAS: Madam President, I believe we are still in the period of interpellations, so I would like to address some questions either to the committee or to the proponent of the amendment.

First of all, what are we trying to extend by this amendment? Are we trying to extend the powers of the PCGG or the powers of the President which otherwise would not exist?

MR. ROMULO: Will the Gentleman give his views? Why does the committee not give its views because Commissioner Villacorta is not here?

I suggest that the committee give its views before the sponsors.

THE PRESIDENT: Yes, because the committee has its own formulation of the extension of six months.

MR. SUAREZ: Madam President, the stand of the committee is that what we are trying to extend is the power and the authority of the Presidential Commission on Good Government to continue issuing these writs of sequestration and freeze orders which have been authorized under Proclamation No. 3 in conjunction with Executive Orders Nos. 1, 2, and 14.

FR. BERNAS: Thank you, Madam President.

So, I take it, therefore, that what we are trying to extend are precisely the terms of Executive Orders Nos. 1, 2 and 14.

MR. SUAREZ: That is correct, Madam President.

FR. BERNAS: And I suppose it would also include that memorandum of the President giving authority to the Presidential Commission on Good Government to vote sequestered shares.

MR. SUAREZ: That would be covered by Executive Order No. 14.

FR. BERNAS: Yes, Madam President, And I take it, too, that sequestration here means takeover as it is mentioned in Section 2, paragraph (a) of Executive Order No. 1, including the takeover or sequestration of all business enterprises; sequestration and takeover are synonymous.

MR. SUAREZ: I think in the rules and regulations promulgated by the Presidential Commission on Good Government sometime on the 11th of April, 1986, the word "sequestration" was clearly defined to mean taking into custody or placing under the commission's control or possession any asset found or other property, as well as relevant records, papers and documents in order to prevent their concealment, destruction, impairment or dissipation pending determination of the question whether the asset found or property is ill-gotten wealth under Executive Orders Nos. 1 and 2.

FR. BERNAS: Let me read paragraph (a) of Section 4 of Executive Order No. 1. It says:

No civil action shall lie against the commission or any member thereof for anything done or omitted in the discharge of the task contemplated by this order.

Is it the intention also of the Transitory Provisions to perpetuate the immunity of the PCGG?

MR. SUAREZ: Madam President, that is not within the contemplation of the proposal submitted by the Committee on Transitory Provisions.

FR. BERNAS: That is not within the contemplation.

MR. SUAREZ: That is not within the contemplation. That is why it was clearly stated yesterday that the issuance of a writ of sequestration notwithstanding, it would not prevent any aggrieved party from ventilating the matter before the Supreme Court in appropriate situations, Madam President.

FR. BERNAS: That is a different matter, Madam President. Section 4, paragraph (a) speaks of the immunity of the members of the commission from civil action.

MR. SUAREZ: No. We reiterate that that is not within the contemplation of this proposal. What we are trying to say here under the proposed Section 7 is to authorize the Presidential Commission on Good Government to continue issuing writs of sequestration. It is that authority that is being granted as an exception to Section 3 of the Bill of Rights.

FR. BERNAS: So, this immunity from suit is not being beatified by this provision?

MR. SUAREZ: The Commissioner is correct, Madam President.

FR. BERNAS: Let me read also paragraph (b) of Section 4 of Executive Order No. 1:

No member or staff of the commission shall be required to testify or produce evidence in any judicial, legislative or administrative proceeding concerning matters within its official cognizance.

As I see it, this provision makes the commission and its staff an island unto itself. Is it the intention also of this

transitory provision to constitutionalize this provision?

MR. SUAREZ: Madam President, that, too, is not within the contemplation of the proposal submitted by the committee.

FR. BERNAS: Is it not?

MR. SUAREZ: It is not?

FR. BERNAS: Let me move to Executive Order No. 14. Section 2 says:

The Presidential Commission on Good Government shall file all such cases, whether civil or criminal, with the Sandiganbayan which shall have the exclusive and original jurisdiction thereof.

Would the Gentleman know if any case has been filed before the Sandiganbayan since all the activities of the PCGG have been started?

MR. SUAREZ: Not to our knowledge. What we only know is that the Solicitor General from time to time have been filing cases with the Presidential Commission on Good Government.

FR. BERNAS: But not with the Sandiganbayan?

MR. SUAREZ: Not with the Sandiganbayan; not to our knowledge, Madam President.

FR. BERNAS: No case has ever been brought to court yet by the Sandiganbayan.

MR. SUAREZ: Not to our knowledge, Madam President.

FR. BERNAS: I had a private conversation with the Presiding Justice of the Sandiganbayan and he also tells me that no case whatsoever has been filed with the Sandiganbayan. Would the Gentleman have any speculation as to why this is not being done?

MR. SUAREZ: It is only a matter of speculation. But I understand that the Solicitor General or the Presidential Commission on Good Government is rather hesitant to file the appropriate cases with the Sandiganbayan against, among others, a certain General Fabian Ver, President and Mrs. Marcos because the moment the case is filed with the Sandiganbayan, they may plead that as a reason for returning to this country. And I understand it might complicate the situation a little more. That is purely a matter of speculation, judging from what has been published in the papers regarding this particular point.

FR. BERNAS: Madam President, let me move to Section 4 of Executive Order No. 14. Section 4, says:

No person shall be excused from attending and testifying or from producing books, papers correspondence, memoranda and other records on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to prosecution.

Does this power sound as if it were an exception to the rule against self-incrimination, Madam President?

MR. SUAREZ: We fear that is exactly the thrust of this provision, Madam President. That is why your committee itself did not get involved with this murky situation and only limited its proposal to allowing the Presidential Commission on Good Government to continue issuing writ of sequestration and writ orders.

FR. BERNAS: So, in other words, this transitory provision is not asking for the extension of the effectivity of Executive Order No. 1?

MR. SUAREZ: Not in the sense.

FR. BERNAS: Not in its totality?

MR. SUAREZ: Not in its totality, Madam President.

FR. BERNAS: Nor, of Executive Order No. 2 in its totality?

MR. SUAREZ: Same exception, Madam President.

FR. BERNAS: Nor of Executive Order No. 14 in its totality?

MR. SUAREZ: Right, Madam President.

FR. BERNAS: It is focusing itself only on the power to sequester.

MR. SUAREZ: The authority to issue writs of sequestration in this order.

FR. BERNAS: Its authority to issue writs of sequestration. And would the committee agree with the explanation of Commissioner Romulo last night, that the writ of sequestration is not a search and seizure order?

MR. SUAREZ: In fairness to Commissioner Romulo, I think he did not say that in a categorical manner. But granting that it partakes of a search warrant or a warrant of seizure as contemplated under the Bill of Rights provision, it would have to constitute an exception to that particular section in the Bill of Rights.

FR. BERNAS: So, it is the position of the committee that this Transitory Provision, if necessary, will grant a necessary exception to the requirements of the Bill of Rights on the search and seizure.

MR. SUAREZ: That is the significance of the proposal, Madam President.

FR. BERNAS: Would the committee also concur with the arguments of Commissioner Romulo that everything that has been done so far has been done in accordance with traditional law?

MR. SUAREZ: Not in that extraordinary way; a writ of sequestration would be characterized after the ratification of the new Constitution. The Commissioner will recall that under the 1935 Constitution's Bill of Rights, only judicial officers are duly authorized to issue warrants of seizure. But this was changed and amended dramatically in the 1973 Constitution, allowing even responsible public officials to issue not only writ of warrants of arrest but also warrants of seizure.

In that sense, it was no longer extraordinary considering that the Freedom Constitution adopted the Bill of Rights of 1973 when it was promulgated. So, even in that sense it could still be considered not extraordinary but traditional because it followed the procedure outlined in the Freedom Constitution in conjunction with the 1973 Bill of Rights, Madam President.

FR. BERNAS: So, if we were to say absolutely nothing about sequestration in the Transitory Provisions, what effect would that have, Madam President?

MR. SUAREZ: That means that the PCGG could continue issuing writs of sequestration pursuant to the Freedom Constitution and the 1973 Bill of Rights, Madam President.

FR. BERNAS: If we said nothing.

MR. SUAREZ: If we said nothing, but after the ratification of the Constitution then the situation would change dramatically, Madam President.

FR. BERNAS: If the Constitution does not say anything about sequestration and the Constitution is ratified, what effect would it have on the powers of the PCGG?

MR. SUAREZ: Automatically it will have to cease — it could not issue anymore writs of sequestration; it would be prohibited under Section 3 of the Bill of Rights of the new Constitution, Madam President.

FR. BERNAS: If this is prohibited under the Bill of Rights, is it the position of the committee that the writ of sequestration is a search and seizure order?

MR. SUAREZ: It is equivalent to that.

FR. BERNAS: And to be valid it must satisfy the requirements of the Bill of Rights?

MR. SUAREZ: Yes, Madam President. In that regard, we agree with the Commissioner.

FR. BERNAS: So that at the heart of this amendment of this Transitory Provision really is the desire for the PCGG to be exempted from the requirements on search and seizure.

MR. SUAREZ: Substantially, that is the thrust, Madam President, for a limited period of time of course. That is why the committee originally proposed "six months period" and the Villacorta amendment seeks an extension of one year.

FR. BERNAS: So, the official interpretation of the committee is that it is really an exception to the Bill of Rights?

MR. SUAREZ: Yes, Madam President.

MR. RAMA: Madam President.

MR. NOLLEDO: Madam President.

MR. RAMA: Commissioner Nollado would like to answer some of the questions.

THE PRESIDENT: Commissioner Nollado is recognized.

MR. NOLLEDO: Thank you, Madam President.

I would like to ask questions of the chairman and members of the committee.

MR. PADILLA: Madam President, before Commissioner Nollado propounds other questions, may I be permitted to express my opinion on the questions and answers — questions of Commissioner Bernas and the answers of the chairman of the committee.

THE PRESIDENT: Excuse me, Commissioner Nollado has been recognized.

MR. NOLLEDO: I have only two questions, Madam President.

THE PRESIDENT: So, after Commissioner Nollado we will call an Commissioner Padilla.

MR. NOLLEDO: Thank you, Madam President.

In answer to the interpellations of Commissioner Bernas, the Gentleman said that his report of recommendation on the writ of sequestration, freeze, search and seizure order that shall continue to be operative within a period of six months and amended to one year by Commissioner Villacorta does not include the instances mentioned by Commissioner Bernas as contemplated in Executive Orders Nos. 1, 2 and 14. There is no question that these executive orders have the force of law having been issued during the revolutionary period; am I right?

MR. SUAREZ: The Gentleman is right, Madam President.

MR. NOLLEDO: And I think the Gentleman is aware that the basic rule or rules that implement these executive orders likewise have the force of law?

MR. SUAREZ: Yes, Madam President.

MR. NOLLEDO: May I remind the Gentleman that we have approved Section 3 of the Transitory Provisions which reads:

All existing laws, decrees, executive orders, proclamations, letters of instruction and other executive issuances not inconsistent with this Constitution shall remain operative until amended, repealed or revoked.

And so, would the Gentleman agree with me that Executive Orders Nos. 1, 2, 14 and the implementing rules set forth by the Presidential Commission on Good Government should fall under Section 3. They shall remain valid, effective until amended, repealed or revoked subject only to the condition that they shall not be inconsistent with the 1986 Constitution.

MR. SUAREZ: The Gentleman is right, except that I can add that the question of Commissioner Bernas does not refer to that situation, Madam President.

MR. NOLLEDO: No, because he was reading the provisions of Executive Order No. 14 and he was also reading the provisions of the implementing rules.

I believe that with respect to immunity provided for in the executive order and implemented by the implementing rules, I think that immunity can continue. I do not find any inconsistency between that provision on immunity and the provisions of the Constitution.

With respect to the exception to the right against self-incrimination, I think that is an open or controversial question, but it cannot be denied that all the executive orders and the implementing rules that now govern the PCGG shall continue until amended or revoked.

MR. SUAREZ: Madam President, the question of Commissioner Bernas was limited to finding out whether it was within the contemplation of this proposed section to cover all of these situations. And we said "no," because the thrust was only limited to extending the authority of the Presidential Commission on Good Government to continue issuing writs of sequestration and freeze orders. In other words, the question and the answer were limited to that point.

MR. NOLLEDO: Precisely, I would like to ask this clarificatory question because I think we have to necessarily refer to Section 3 also of the article that we have approved. Because it seems that based on the Gentleman's answers, just because the current proposal under consideration should not include those instances, I think they are necessarily included under Section 3 of the article.

Thank you, Madam President.

THE PRESIDENT: Vice-President Padilla is recognized.

MR. PADILLA: Madam President, the original draft of the committee refers to writ of sequestration, freeze, search and seizure order. The new proposal has excluded search and seizure. It is only limited to sequestration or freeze order. So, I believe that if it is a search and seizure order, it must comply with the provision of the Bill of Rights, which particularly requires a judicial action and prohibits a general search and seizure, because the things and the place to be seized or searched must be specific.

As to the question whether sequestration or freeze order is a takeover, I believe that sequestration or freeze order is only a preservative or a conservative act to prevent transfer or alienation of the assets that are suspected to be unlawfully acquired properties or ill-gotten wealth. It does not authorize, especially if the sequestered orders are only some shares of stock in an ongoing private enterprise for the PCGG to take over the business. In fact, I stated

yesterday that it should not even interfere in the management, control and operation of an ongoing private business. If there is no provision in the transitory article on the continuance of the power to issue sequestration or freeze order, I am afraid that after the ratification of the treaty of the Constitution, there may be no such power. The purpose of the transitory provision is to allow the PCGG to continue its power of sequestration or freeze until the Congress shall determine otherwise, although the provision extends the period of six months to one year.

Madam President, in accordance with the observation of Commissioner Concepcion, our former Chief Justice, we should include a proviso that within a certain period, say, six months after the issuance of the sequestration or freeze order, the PCGG must or shall file a judicial action either in the Sandiganbayan or in any other appropriate court. That is the provision of RA 1379, that after the presumption of unlawfully acquired properties because they are beyond the salaries, lawful income — an income of lawfully acquired properties — the presumption of fraudulent acquisition of property must be followed by a petition by the Solicitor General leading to the forfeiture of such ill-gotten wealth.

Thank you, Madam President.

MR. RAMA: Madam President, I ask that Commissioner Romulo be recognized for a few remarks.

THE PRESIDENT: Commissioner Romulo is recognized.

MR. ROMULO: Madam President, I just want to clarify our position as sponsors vis-a-vis that of the committee. I think we have no basic disagreement but there are different points of emphasis.

First, a writ of sequestration and freeze order are legal under Proclamation No. 3, Executive Order Nos. 1, 2, 13, 14, 14-A, and Presidential Memo dated June 26, 1986. I have not said that this is legal under laws existing prior to Proclamation No. 3.

Second, upon the effectivity of the Bill of Rights, we believe the writ of sequestration does not collide necessarily with the Bill of Rights because it does not partake of the writ of search and seizure. Even if it is tantamount to a writ of search and seizure, it can still be reconciled with the Bill of Rights because there is jurisprudence to the effect that postponement of a judicial inquiry is not a denial of due process, if opportunity is given for the ultimate judicial determination of the liability.

If that is the case, why then do we need a transitory provision? The reason is that we do not wish to take a chance on depending on the vagaries of judicial interpretation. And why do we not want to take a chance? It is because of the national interest involved.

These people have had twenty years to hide their ill-gotten wealth. They are past masters in the techniques of hiding their wealth. The people in the government are "babes in woods" compared to these people. That is why we must not take a chance for the public interests and for the interest of justice to recover \$5 to \$10 billion stolen from the people. We are fighting for \$10 billion.

If one has that, he would be willing to spend at least \$1 billion to protect the rest of his horde. One billion dollars in the hands of an enormous conspiracy, with tentacles to the depth and levels that we do not know, makes the government a weakling as compared to these people. They are everywhere and we do not know to what extent. Thus the PCGG must be able to act quickly to freeze, to prevent dissipation and transfer of the property before it is too late. Those of you who practice law must know how difficult it is to depend on a writ of attachment. Let me just illustrate it from my own practice. In the Mellon Bank case where \$1 million fell upon the hands of some local people by mistake, I secured a writ of attachment in the morning only to be lifted that very afternoon. That case was an open-and-shut one. And what is more — these cases, through the expertise of accountants, of lawyers

and businessmen, have been hidden, well-disguised, well-camouflaged. We will leave the government helpless unless we give them this remedy which we may argue is extraordinary. Well and good. And if it is, I believe we must so provide in the Transitory Provisions, otherwise, we may have a gap in the law which they will take advantage of. Safeguards can be provided by way of amendment. One of them has already been mentioned by Commissioner Padilla but we must not so encumber, so delimit this writ of sequestration as to render it useless. We will benefit only one person and his cronies by doing so.

FR. BERNAS: Madam President, may I ask one question of his honor, Commissioner Romulo?

THE PRESIDENT: Commissioner Bernas is recognized.

FR. BERNAS: Madam President, do I take it therefore that the committee's position is that if they are silent about sequestration, then automatically the powers under Executive Orders Nos. 1, 2 and 14 disappear? Does the Gentleman take issue with that, Madam President?

MR. ROMULO: May I beg the Gentleman's pardon?

FR. BERNAS: Without a transitory provision, according to the committee, if I understand it correctly, the power given under Executive Orders Nos. 1, 2 and 14 would automatically disappear?

MR. ROMULO: In my opinion, it may disappear. In any case we create a grey area where there is doubt as to the existence of that power, and that is why I say I cannot take a chance in the national interest.

FR. BERNAS: But even if there is a doubt, would the presumption still be for the validity of Executive Order Nos. 1, 2 and 14?

MR. ROMULO: As Commissioner Nolleto has pointed out, Section 3 of the Transitory Provisions may continue the validity of these executive orders until reversed or amended by Congress.

FR. BERNAS: So that if we say nothing about sequestration, Executive Orders Nos. 1, 2 and 14 will still be there unless in a proper case filed before the Supreme Court, the Supreme Court says that these cannot stand?

MR. ROMULO: Yes. That is the chance I do not wish to take.

FR. BERNAS: The Gentleman cannot trust the Supreme Court, Madam President.

MR. ROMULO: Reasonable men may disagree. It is not clear whether these executive orders per se violate the Bill of Rights. I argue that they do not, but supposing the Supreme Court decides that they do, then the PCGG is powerless. That is precisely what I mean by not taking a chance.

FR. BERNAS: Thank you, Madam President.

MR. RAMA: Madam President, the provision and amendment had been sufficiently debated on. So, I ask Commissioner Bernas to file his formal motion. There are no more registered speakers on the same issue.

MR. NOLLEDO: Madam President.

THE PRESIDENT: Commissioner Nolleto is recognized.

MR. NOLLEDO: I would like to speak against the motion to delete. Is there already a motion? I understand a motion was filed yesterday.

FR. BERNAS: I am just about to file it, Madam President.

MR. NOLLEDO: I am sorry. I will speak later.

THE PRESIDENT: Please proceed.

FR. BERNAS: I would ask for the deletion of Section 8 of the Transitory Provisions for these reasons: Either it is necessary or it is unnecessary, or if it is necessary, it is oppressive.

We have listened to the arguments principally of Commissioner Romulo which tried to establish that what the PCGG has been doing are things which can be done even under normal processes. The thrust of the argument is, therefore, it would be unnecessary. This provision would be unnecessary except — as Commissioner Romulo has explained very well — as a safety measure, as a sanitary shield as it were. If however, it is necessary, it can only be necessary because as explained by the committee, it runs smack against the Bill of Rights. What I would like to avoid is precisely the situation where, as we enter into the normalization of constitutional processes, we aim a sword against the very heart of a Constitution which is the Bill of Rights. To my mind, that would not be a very good way to continue a revolution.

If we delete this provisions, what will happen? Executive Order Nos. 1, 2 and 14 will be there. They will not be automatically erased by the silence of a Constitution. Their validity or invalidity can still be argued before the Supreme Court, which is the proper place for a decision on this matter.

In other words, when I say delete, I am not necessarily saying that it will leave the PCGG on the lurch. But the Supreme Court should be given the opportunity to examine the PCGG in the concrete as it exists now under Executive Order Nos. 1, 2 and 14. Let us give the Supreme Court a chance to find out which of these are abhorrent to democratic processes.

I would not grant that millions or billions of dollars are involved. That is a monetary value. But there are values in the Constitution which are beyond monetary estimation. And when we begin to disregard these values which have been there for a long time and we begin to put a dollar value on them, then I think we are in a very bad situation. So for these reasons, and as an act of confidence in the renovated Supreme Court, I ask for the deletion of Section 8 and to leave the entire matter to judicial investigation.

MR. RAMA: May I ask that Commissioner Nolledo be recognized for three minutes.

THE PRESIDENT: Commissioner Nolledo is recognized.

MR. NOLLEDO: Thank you, Madam President.

I would like to speak against the motion of Father Bernas, Madam President. I beg to disagree with the members of the committee when they said that sequestration is synonymous with seizure. I agree with Commissioner Romulo that they are apart from each other.

Madam President, I consulted Black's law dictionary, and the distinction could easily be seen when Professor or Justice Black said that when we talk of seizure, we talk of the forcible taking of possession; while when we talk of sequestration, we talk of depositing for preservative purposes. And I readily agreed with this distinction, Madam President, because I am reminded that in the Civil Code, the word "sequestration" falls under the title of "Deposit." I am also reminded of the provisions of the National Internal Revenue Code authorizing the BIR Commissioner to impose a constructive restraint upon personal properties of a delinquent taxpayer without necessarily following the provisions on search and seizure. But Commissioner Romulo said: "We do not know the minds of the members of the Supreme Court." Somebody might question the power of the PCGG to issue sequestration orders, Madam President, and the Supreme Court might say that a sequestration order runs afoul of the Bill of Rights. But I think what is most important here, Madam President, is that in the committee report, it is mentioned that the order sought to be continued does not refer only to sequestration orders. It talks also of orders

with reference to search and seizure. We cannot deny, Madam President, that later on the PCGG may need a seizure order, as it is not issuing.

Under the 1973 Constitution, it is not only a judge who is authorized to issue a seizure order, but also a responsible officer. But under the 1986 Constitution, we deleted the words "responsible officer." Therefore, it is on this basis, Madam President — I would like to emphasize this — that there is really an inconsistency and a possible impairment by the PCGG when it issues a seizure order later on in the light of the new provision of the Bill of Rights. That is why I vigorously disagree with Commissioner Bernas when he said that there is no need for this provision in the 1986 Constitution. There is a need in order to obviate the raising of the issue later on by respondents — that the seizure order of the PCGG will violate the new Bill of Rights.

Madam President, I think I should agree with Commissioner Romulo that the PCGG should be able to act quickly because of the subtle ways by which Marcos and his cronies hid the \$10 billion — or perhaps some — which they stole from the National Treasury. This is an extraordinary situation I would like to emphasize one theory, Madam President, with the kindest indulgence of the Members of this Commission.

Yesterday, in defense of the report of the committee, I propounded a theory concurred in by Commissioner Sarmiento, that the acts of the PCGG are dictated by the police power of the State. I believe that the Bill of Rights, to some degree, must yield to the police power of the State. There are abundant cases to this effect, Madam President. For example, in the case of the distribution of Bibles by children on the streets, while it is true that this is in the exercise of the freedom of religion guaranteed by the Bill of Rights, the Supreme Court of the Philippines, citing American cases, said that under the police power of the State, the distribution of Bibles on the streets by children can be regulated. Also, Madam President, I think every lawyer knows about abatement of public nuisance or even private nuisance because this is an interference to property rights, because property rights are guaranteed by the Bill of Rights. But because these properties may be obstructions, they can be extrajudicially abated, without necessarily following all the requirements on due process guaranteed by the Bill of Rights. I believe that because of the extraordinary situation involved in the stealing of the National Treasury, the police power of the State must come in. It is in this spirit that Proclamation No. 3 authorized the President to issue the necessary executive orders, authorizing such bodies, like the PCGG, to recover ill-gotten wealth so that this will serve as an example to public servants who are not true to their oath of office.

Thank you, Madam President.

MR. RAMA: May I ask that Commissioner Bengzon be recognized for three minutes.

THE PRESIDENT: Commissioner Bengzon is recognized.

MR. BENGZON: Madam President, as Commissioner Bernas said, it is true that the PCGG can do the things that it has been doing without the writ of sequestration, but these things it can do only subject to the current practices in the field of law. Commissioner Romulo just gave one example of this case in the Mellon Bank. I can give loads of examples of cases in our practice which are frustrating because even before we can obtain a writ of preliminary attachment, the other party is already aware of our moves. And, therefore, because of this situation, of this kind of practice we have in this country, then it becomes necessary. The writ of sequestration is necessary. And it being necessary, it has precisely to preserve and freeze these assets.

To delete this draft provision, Commissioner Bernas admits, would generate litigation. We would go up to the courts all the way up to the Supreme Court, and at the end of the day we will find ourselves chasing a rainbow at the end of which is an empty bag.

The rights of those involved, including the properties which are under target, are not without remedy. We are not

exchanging civil liberties and Bill of Rights just for the glitter of gold because they have their remedies and they can contest the method, they can contest the reasons under which the writs of sequestration were issued and, therefore, they are not without remedy, Madam President.

You will notice that Lady Justice is blindfolded with an even scale but her sword held up high. I would rather have that sword pointed at this man and his cronies than have Lady Justice hold it up high and watch him walk away with a sneer.

Thank you, Madam President.

MR. RAMA: Commissioner Padilla requests to be recognized for one statement.

THE PRESIDENT: Commissioner Padilla is recognized.

MR. PADILLA: Madam President, the PCGG was created by the President under the provisions of the Freedom Constitution, Proclamation No. 3, and thereafter, the President issued several executive orders: 1, 2, 14, 14-A, specifying the powers of the commission.

Madam President, this Constitution which we are drafting will supersede all previous Constitutions — 1935, 1973 and also the Freedom Constitution. So I am against the motion for deletion, because if there is no transitory provision recognizing the power of sequestration and freeze order — not search and seizure and subject to judicial action to comply with the fundamental principle of due process with notice and hearing — if this were deleted, I doubt very much whether the PCGG can continue in its mission to discover ill-gotten wealth, pursue its preservation and freeze leading to a judicial action for forfeiture of such ill-gotten wealth.

MR. RAMA: Madam President, may I say a few words on the matter? I think the formidable argument of Commissioner Bernas which has not been answered is: Are we going to place a price tag on the Bill of Rights which is at the heart of the Constitution? There are many extraordinary things that have happened in this country, and one of the extraordinary offices is the PCGG. We are in a very extraordinary time, a ferocious time and there has been an extraordinary plunder of the country.

I was with Commissioner Jovito Salonga before he left for Switzerland, and he told me that he was going there because there is something extraordinary happening in Switzerland where the Swiss government is willing to freeze or to return to the Philippine government the gargantuan deposits of the deposed President. And he was talking not only in terms of a billion dollars but several billion dollars. He also told me that they have secured a document on the deposits made by the deposed President and his wife — documentary evidence that they have such deposits in the Swiss bank — that is why he was rushing to Switzerland to try to pursue this case and he is hopeful that the Philippine government may recover these billions of dollars up to \$10 billion in deposit.

In our extraordinary time, Madam President, we are really facing a certain disaster, if we cannot solve our economic problem. In other words, the State is extra-ordinary in the sense that if we recover these \$5 or \$10 billion, that may mean the salvation of the country. Therefore, the price tag is actually the salvation of the whole country, and I thought that if the price for a one-shot exemption from the sacred Bill of Rights is the economic redemption and salvation of this country, then that is a price worth paying, Madam President.

May I ask Commissioner Rodrigo to be recognized, Madam President.

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: Madam President, all I need is one minute. What we are after, Madam President, is not only money, not only dollars or billions of dollars; what we are after is justice. Justice, both legally and morally, demands restitution from the plunderer. Justice demands that the money plundered from the Filipino people be

returned to the Filipino people. And, further-more, it would set a bad precedent if a President and his cronies, who violated flagrantly our Bill of Rights wild now be able to hide behind the Bill of Rights to get away with their plunder, for then future Presidents, future Heads of State, looking back at what Marcos gained, and seeing that Marcos and his cronies are free and enjoying their millions and billions of dollars, these future rulers might be tempted to do the same; and, Madam President, God save our people.

THE PRESIDENT: The Floor Leader is recognized.

MR. RAMA: May I ask that Commissioner Colayco be recognized for a two-minute statement.

THE PRESIDENT: Commissioner Colayco is recognized.

MR. COLAYCO: Thank you, Madam President.

I am afraid I am going to take the unpopular side. Everybody admits that the PCGG is doing a yeoman's job, even a necessary job, beneficial job, for our country. What we are now trying to discuss is the manner or the procedure now being followed by the PCGG. Is it the only way that the job that it has been doing well can be done? That is the only issue. We have, on one side, the right of our country to recover the huge plunder of the people's money. On the other side, we have the rights also of the persons, the entities, that are now the subject of the admittedly violative rights of these entities.

I agree with the statements made here that some, if not many, judges are corrupt; and that is deplorable. The instances mentioned by Commissioner Romulo and others are unfortunately true. But our courts are open. Are there no more honest judges in our country that we feel we are justified to throw away our Constitution simply because we think that they cannot be trusted anymore?

These are the considerations that we have to consider, Madam President. If we are going to follow the same line of procedure, whenever something very important involving the rights of some people or even of our country are involved and we believe that our judges cannot be trusted, we can justify the liquidations that are now taking place because our procedural steps are too slow. Mr. Tulfo, the columnist of Bulletin, for instance, on two occasions shocked me when he justified what he admitted to have been unlawful killings of suspected carnappers and other so-called criminals. Where are we going to stop, if everytime we have something we believe is important, we are going to do away with the constitutional safeguards that are intended to cover everyone — poor, rich, suspects or otherwise? Are we then going to enshrine now that anything that is necessary can justify even an unconstitutional remedy? I know that without the radical steps taken by the PCGG, probably much of the money and riches that have been plundered would escape, if the lawful remedies that were necessary to recover them were used. But I repeat, if we are going to countenance, if we are going to justify the procedure of the PCGG, then we have to justify the killings, the disappearances that we are now shouting against and other off-the-law conduct of our so-called guardians of law. I believe that there are still many judges, many courts, many court employees who can perform the lawful procedure prescribed by law and, at the same time, safeguard sufficiently the interests of our government.

I thank you, Madam President.

MR. RAMA: Madam President, there are two more registered speakers. Because of the importance of this issue, the Floor Leader will allow these two speakers to wind up the debate, one for and one against the deletion. May I ask that Commissioner Tingson be recognized.

THE PRESIDENT: Commissioner Tingson is recognized.

MR. TINGSON: Madam President, my short discourse would be revolving around the truism, "Nothing is

politically right that is morally wrong." Walang matuwid sa pulitika na hindi matuwid sa konsiyensiya.

Madam President, I spent about three semesters studying political science at Loyola University in Chicago. I learned a lot there. I noticed that the Jesuit priests are very good teachers and they pounded upon us — upon me — the truth that all laws are based upon moral law; that moral law must always come ahead whatever law man makes. And so, the Constitution, Madam President, that we are now framing cannot rise above the Constitution of moral law, specifically probably the moral law embedded within the Holy Word. And the Holy Scriptures say, "He who steals must be punished." That is moral law, and, corollary to that, anything that goes that would subvert that, according to my teachers at Loyola University in Chicago, is never right. One of the most applauded speeches during our public hearing was the one delivered by the President of our Commission in Iloilo City, when she declared that the Constitution we are framing must be pro-people, pro-Filipino and pro-God. In this particular issue we want to be pro-people. We are clamoring, Madam President, that the billions stolen from the people must be returned. We want to be pro-Filipino because our people are suffering economically, and this \$10 billion or so absconded from the Filipino people must be retrieved. The President said in Iloilo City that this Constitution must be pro-God. God cannot allow anybody — whether he becomes the Chief Executive of the land — to steal and rob the people blind.

Madam President, I noticed that a few weeks ago when I had the joy and the privilege of participating in a conference in Amsterdam where 10,000 evangelists from around the world gathered under the leadership of evangelist Billy Graham. I had the honor of being interviewed by newspapermen from West Germany, from England, from Hungary and other places there, and even Union of Soviet Socialist Republics also participated there. And they all applauded Cory Aquino. And they all said to me. "That is right, this stolen money must be returned to the Filipino people."

Madam President, if the people abroad want the stolen wealth to be retrieved by us, why do we not rally behind the PCGG as a commission and say likewise? We should. As I close now, I notice, Madam President, the beautiful prayer of Chief Justice Roberto Concepcion delivered the other day, and I agree with him:

We beg You, our Lord and Shepherd to sustain us,
To provide us with further strength
And impart to us the light of Your wisdom
To the end that we may complete the New Constitution
In line with the demands of a just, humane,
and democratic society, . . .

Thank you, Madam President.

MR. RAMA: Madam President, may I ask that commissioner Ople be recognized for three minutes.

THE PRESIDENT: Commissioner Ople is recognized.

MR. OPLE: Madam President, yesterday when I participated in the debate, I indicated that I would like to keep an open mind on the issue of deletion. Since then, I have determined that it is my duty now to speak in favor of the Bernas amendment for deletion, if only to rescue the good father from the loneliness of his crusade. Of course, I have circulated three proposed amendments and I hope, in the event that the motion for deletion loses, I would be in a position to improve upon this proposed section, especially from the standpoint of the Bill of Rights so that later I can support an amended provision more compatible with the Bill of Rights and due process.

Madam President, all throughout these debates, I have noted a tendency to look at the Bill of Rights in a cavalier manner. For example, I was disappointed yesterday when my friend, Commissioner Romulo, in answer to one of

my questions, said that if there is a clash between the Bill of Rights, particularly Section 3 and the writ of sequestration provision where an order is contested before a court, there would be a little margin of freedom for the courts to uphold the Bill of Rights precisely because of this provision. The Bill of Rights, Madam President, is, by the protestations of all Commissioners, the heart of this Constitution. When we wrote the Bill of Rights, I do not think we made this reservation in our minds and hearts that any portion of it could be allowed to be vitiated, no matter how preponderant the pretext for it might be, in terms of the moral grandeur of such an objective. Father Bernas is right. When one writes a Bill of Rights and in the same breath agrees to vitiate some of its provisions, one might be accused of a double standard. What will prevent equally urgent considerations such as national security from affecting the attitude of, let us say, those in charge of national security towards the Bill of Rights? There is a provision there that we amended — the liberty of abode and the right to travel — and we said this prohibits hamletting which is a forcible evacuation of families in certain villages, in a zone of actual or potential hostilities. And when we relax our standards and vigilance over Section 3 of the Bill of Rights, are we not sending a signal to some of these people in the military, that because national security is equally imperative as a goal of this nation, that the provision on the liberty of abode can also be vitiated in the name of larger goals of the State?

I think, historically, we are forewarned that the question of ends and means has nagged many societies and many governments before us. In the 15th century, Miguel de Torquemada established a record of sorts in Spain by causing the execution of 2,000 heretics and, of course, at that time, he was hailed and acclaimed for the majesty of that achievement. In the name of the purity of Catholic beliefs, 2,000 people suspected of heresy were systematically eliminated. And, of course, this dilemma of mankind as between ends and means has dominated the agenda of social and political thinkers for a long time.

It is said that political science begins with Machiavelli's book, "The Prince." According to this book, if you want to preserve yourself in the political world, it is essential that you falsify things. It is essential for your own political survival and for the maintenance of power, if you are already in power, to disregard the ethics and moral values that otherwise bind a community, and probably in some ways this is correct. You have to enter into many compromises in politics to be able to survive and yet there are those distinguished by a hard core of belief in their own ethical values and even if they face defeat in an election, they refuse to compromise their own beliefs. Then that is the price that they willingly accept.

Madam President, I am not saying that there is a direct correspondence between what I have said and the issue of the recovery of ill-gotten wealth. I think no one dissents from the view that this country is entitled to the recovery of any stolen possessions. At the same time, do we have to see this within the frame of the rights that we have enshrined in this Constitution for the people or shall we elect — as the body historically charged with the task of writing this new Constitution — to allow situations where, in proportion to the nobility of objections, there is a mandate to relax our vigilance and standards with respect to the rights of the people that we ourselves have written into this Constitution and which will detract undoubtedly from the majesty and nobility of this Constitution that we are preparing for our people?

And so, Madam President, may I conclude by saying that in my heart, my awareness of the complex dilemma of ends and means, as it has worked throughout history, impels me now to defend the Bernas amendment for a deletion. This is without prejudice to my presenting amendments later, if the motion to delete loses so that more of us can support wholeheartedly this Section 8 of the Transitory Provisions.

Thank you.

MR. RAMA: Madam President, before we take a vote, I ask that Commissioner Romulo be recognized for a one-minute defense of himself, having been alluded to by the previous speaker.

THE PRESIDENT: Commissioner Romulo is recognized.

MR. ROMULO: Madam President, as usual, Commissioner Ople has the best of both worlds: he argues for deletion but reserves the right to amend. In any case, I do not treat the Bill of Rights cavalierly any more than the Supreme Court does. No provision in the Bill of Rights is absolute; there is always a balancing of interests, as the good Commissioner knows; the Bill of Rights always admits of exceptions. That is what we are talking about today balancing one interest as against the other and finding, I hope, a happy solution.

Thank you.

MR. RAMA: Madam President, the proponent of the motion would like to speak for one minute to conclude his arguments.

THE PRESIDENT: Commissioner Bernas is recognized.

FR. BERNAS: Madam President, I have been told that whatever I have to say here may be in the nature of a dying declaration. But let me say it just the same.

I would like to reiterate that the effect of deletion will not be the dismantling of the PCGG. But the sole effect of the deletion would be that we would keep the practices and the laws supporting the PCGG on the statutory level. Whereas, if we do not delete this, we are under danger of elevating the practices of the PCGG to a constitutional level. Let us keep it on a statutory level where it can be challenged before the Supreme Court, where the laws and the practices in support of the PCGG can be examined to see if — in the language of the Jesuits who taught Commissioner Tingson in the University of Chicago — they are also "politically moral."

So, let us place our trust in the Supreme Court so the Supreme Court will be able to examine the powers that have been given out to find out which of these should be allowed to stay and which should not be allowed to stay; and let us not bind the hands of justices by elevating the powers and practices of the PCGG to a constitutional level.

Thank you, Madam President.

MS. AQUINO: Madam President, just one query to the proponent.

THE PRESIDENT: Commissioner Aquino is recognized.

MS. AQUINO: If by some stroke of luck the motion to delete is adopted by this Commission — and that I will heartfully, wholeheartedly endorse — will this include the deletion of the immunity clause that is being accorded the PCGG.?

FR. BERNAS: I would say that on my theory it does not, because the deletion will still leave Executive Order No. 1 in the statute books. It will have to be shown that those provisions found in Executive Order No. 1 are contrary to the Bill of Rights for them to be abolished.

MS. AQUINO: Which means that the intent of the motion to delete will be canalized only to the provisions of Section 3 of the Bill of Rights.

FR. BERNAS: Yes, because in the presentation of the committee, I specifically asked if what was intended was the canonization or beatification of the immunity; and the committee said "no." And I enumerated specific provisions under Executive Orders Nos. 1, 2 and 14, and the committee said all it is asking for is sequestration — that vague word "sequestration."

MS. AQUINO: I asked this question preliminary to the possibility of providing for an amendment which would do away with the immunity clause of Executive Order Nos. 1, 2 and 14.

Thank you, Madam President.

MR. GUINGONA: Madam President.

THE PRESIDENT: Commissioner Guingona is recognized.

MR. GUINGONA: Madam President, I agree with Commissioner Bernas when he says that we should not bind the justices of the judiciary in determining this very important issue. And it is precisely because we would not want to bind them that we are providing this provision on the writ of sequestration. Between statutory law and the specific provision in the Constitution as found in the Bill of Rights, there can be no question that the statutory law will have to yield to the provision of our Bill of Rights as contained in the draft Constitution.

Thank you very much.

MR. RAMA: Madam President, the body is now ready to vote on the motion to delete.

VOTING

THE PRESIDENT: The motion is very simple: It is to delete Section 8 in the committee report of the Committee on Transitory Provisions.

As many as are in favor of the motion, please raise their hand. (Few Members raised their hand.)

As many as are against, please raise their hand. (Several Members raised their hand.)

As many as are abstaining, please raise their hand. (One Member raised his hand.)

The results show 6 votes in favor, 29 against and 1 abstention; the motion to delete Section 8 is lost.

MR. RAMA: Madam President, now we are ready to vote on Section 8 on the provision sought to be deleted.

THE PRESIDENT: We are open for amendments now. We are in the period of amendments.

MR. RAMA: May I ask the proponent to read the new formulation.

SUSPENSION OF SESSION

MR. VILLACORTA: Madam President, may we call for a two-minute suspension to incorporate the other amendments.

THE PRESIDENT: The session is suspended.

It was 11:26 a.m.

RESUMPTION OF SESSION

At 12:05 p.m., the session was resumed.

THE PRESIDENT: The session is resumed.

MR. RAMA: Madam President, may I ask that the committee chairman be recognized.

THE PRESIDENT: The honorable chairman of the committee is recognized.

MR. SUAREZ: Thank you, Madam President.

The reformulated amendment is still being mimeographed. At any rate, may I be permitted to read the

reformulated amendment incorporating therein the proposal submitted by the honorable Vice-President Padilla and the proposal submitted by Chief Justice Concepcion as well. And as reformulated the proposal originally presented by the Honorable Villacorta and others will read like this, Madam President: "ANY SEQUESTRATION OR FREEZE ORDER ISSUED OR WHICH MAY BE ISSUED IN RELATION TO THE RECOVERY OF ILL-GOTTEN WEALTH SHALL CONTINUE TO BE OPERATIVE FOR EIGHTEEN MONTHS AFTER THE RATIFICATION OF THE NEW CONSTITUTION. CONGRESS, IN THE NATIONAL INTEREST, AS CERTIFIED BY THE PRESIDENT, MAY EXTEND SAID PERIOD. THE CORRESPONDING JUDICIAL ACTIONS SHALL BE FILED WITHIN SIX MONTHS AFTER THE ISSUANCE OF THE SEQUESTRATION OR FREEZE ORDER. SAID ORDER AND A LIST OF THE SEQUESTERED PROPERTIES SHALL BE FORTHWITH REGISTERED WITH THE PROPER COURTS."

So, I think the proposal is now being distributed among the Commissioners.

Madam President, may we request that Commissioner Villacorta be recognized to explain the change from one year from date of convening of Congress to 18 months after the ratification of the new Constitution.

MR. VILLACORTA: Madam President, after considering the proposal of the Honorable Padilla with respect to the phrase: "after the convening of the First Congress," the coauthors of this amendment agreed that we make it "AFTER THE RATIFICATION OF THIS CONSTITUTION," but the period will be changed from one year to 18 months. If this takes effect immediately after the ratification of the Constitution, then six months would have been lost. And in order that we be consistent with the intendment of this amendment, we would like to change, Madam President, the period of time to 18 months. So the reformulated amendment, Madam President, will read: "ANY SEQUESTRATION OR FREEZE ORDER ISSUED OR WHICH MAY BE ISSUED IN RELATION TO THE RECOVERY OF ILL-GOTTEN WEALTH SHALL CONTINUE TO BE OPERATIVE FOR EIGHTEEN MONTHS AFTER THE RATIFICATION OF THIS CONSTITUTION. PROVIDED THAT CONGRESS, IN THE NATIONAL INTEREST, AS CERTIFIED BY THE PRESIDENT, MAY EXTEND SAID PERIOD. THE CORRESPONDING JUDICIAL ACTION SHALL BE FILED WITHIN SIX MONTHS AFTER THE ISSUANCE OF THE SEQUESTRATION OR FREEZE ORDER. SAID ORDER AND A LIST OF THE SEQUESTERED PROPERTIES SHALL BE FORTHWITH REGISTERED WITH THE PROPER COURTS."

MR. SUAREZ: Madam President.

THE PRESIDENT: The chairman of the committee is recognized.

MR. SUAREZ: In the reformulated proposal, the last sentence — and this was discussed between this Representation and the Chief Justice — the use of the word "FORTHWITH" might be construed as after the expiration of the six months referred to in the Padilla amendment. So, it is respectfully suggested that the last sentence be ahead of the preceding sentence such that as proposed and reformulated the sentence will read: "SAID ORDER AND A LIST OF THE SEQUESTERED PROPERTIES SHALL BE FORTHWITH REGISTERED WITH THE PROPER COURTS." This should precede the sentence: "THE CORRESPONDING JUDICIAL ACTION SHALL BE FILED WITHIN SIX MONTHS AFTER THE ISSUANCE OF THE SEQUESTRATION OR FREEZE ORDER." That is the only suggested recasting of this particular section by the committee, Madam President.

MR. VILLACORTA: We accept the suggestion Madam President.

MR. SUAREZ: Thank you.

MR. AZCUNA: Madam President.

THE PRESIDENT: Commissioner Azcuna is recognized.

MR. AZCUNA: May I ask the proponent a question on the second paragraph? Madam President, what happens to those sequestration orders that were issued prior to the ratification of the Constitution which may have been done five months or four months already? Would they have only two months left to file them in court for judicial action?

MR. VILLACORTA: Madam President, may I refer that question to the Honorable Padilla since he is the author of this amendment to the amendment.

THE PRESIDENT: Commissioner Padilla is recognized.

MR. PADILLA: The suggestion, Madam President, of making the period counted after the ratification of this Constitution rather than the convening of the First Congress is that this is a constitutional provision which is carried over in the Transitory Provisions and the effectivity as well as the period is not really legislative but constitutional. The question is: the sequestration and freeze orders issued before the ratification of the Constitution.

MR. AZCUNA: Yes. When is the judicial action to be filed?

MR. PADILLA: The 18 months that is suggested in lieu of one year is with regard to the power of the PCGG.

MR. AZCUNA: I have no problem with the 18 months, Madam President. It is the six months.

MR. PADILLA: With regard to six months, that means that when a sequestration or freeze order has been issued, the probability is that there is not only some suspicion that the assets frozen are ill-gotten wealth but that there is some probable cause or evidence therefor. So the PCGG will have to file the corresponding judicial action within six months after the issuance of any particular sequestration or freeze order.

MR. AZCUNA: How about those that were issued for more than six months already? Do they have to be filed immediately after the ratification of the Constitution?

MR. PADILLA: No, I do not believe there would be such a risk unless the PCGG does not perform its duty to file the corresponding action. In other words, if they only freeze, but do not do anything about it.

The purpose of this provision is to require them, in consonance with due process, with the requirements of notice and hearing, that the proper action be filed within six months after issuing the sequestration or freeze order.

MR. AZCUNA: Yes. My difficulty is, how about those that were issued already, let us say, last month? They were issued last September.

MR. PADILLA: If it was issued last month, they have six months to bring the action. That is to prevent also the situation which may be anomalous — that certain assets are sequestered or frozen and yet no action has been taken by the PCGG. In other words, we want the judicial action, because that is part of due process.

MR. AZCUNA: Yes, but we want to give them six months, Madam President. And this six months may have expired already by the time the new Constitution takes effect.

MR. PADILLA: That means that they should act even before the ratification of this Constitution.

MR. AZCUNA: But it is not yet effective, Madam President. So, would the Commissioner not agree to an amendment providing say, six months after the issuance of the sequestration or freeze order or the ratification of this Constitution, whichever is later?

MR. PADILLA: No, I believe the purpose is to make them act. Many of the PCGG lawyers in the United States or even those helping in Switzerland have already filed actions. But it is only in the Philippines that they have not filed a single action. And the purpose here is to make them act.

MR. AZCUNA: Yes, Madam President. We will compel them to file them within six months after the ratification of the Constitution — all sequestrations made prior thereto. And subsequent sequestrations shall be six months.

MR. PADILLA: I believe that will be too late, because when was the PCGG created and when were they issuing these freeze orders? And these freeze orders have, in a way, imperiled ongoing business sometimes because of excessive interference with management. And I think the purpose of this period of six months is to make them act even before the ratification of the Constitution.

As a matter of fact, Madam President, the observations of Commissioner Concepcion wanted even an immediate action because it is not enough that the PCGG issue a freeze order and then sometimes disturb the normal operations of a private business enterprise and they do not follow it up. They should follow it up with an action within six months. And that six months is independent of the ratification of the Constitution.

MR. BENGZON: Madam President.

THE PRESIDENT: Commissioner Bengzon is recognized.

MR. BENGZON: I just want to be clarified by Commissioner Padilla, Madam President.

If a sequestration order was issued four months ago, does that mean to say that the PCGG only has two months left within which to file the case?

MR. PADILLA: That is the intendment.

MR. BENGZON: Is the Commissioner not considering the fact that there may be very voluminous documents and complications in the determination of the evidence before the necessary information or complaint is filed in the Sandiganbayan? Which may require a longer period?

MR. PADILLA: But there are some instances that were mentioned. For example, in the BASECO case which was originally NASSCO, a public corporation converted into a private corporation, the Solicitor General said before the Supreme Court that there had been so many interlocking documents including the organization of corporations, because BASECO is supposed to be owned now 80 percent by two corporations and only 20 percent by individual stockholders. And these two corporations are also owned by other persons.

The name of Benjamin Romualdez does not appear, but all the shares of stock which were impounded in Hawaii by the US Customs are all indorsed in blank and there is difficulty sometimes to untangle these interlocking documents and corporations that were employed by the past regime through the help of lawyers, accountants and auditors including the Sycip accounting office. That is the situation. But when the freeze order was issued sometime in October, they had six months to file the action, and the complaint could be filed now, even subject to further investigation and even, probably, an amendment to the complaint, if there should be the necessity of making alterations or amendments to the pleadings in consonance with further evidence they had discovered. The purpose is that we should not allow the PCGG to just issue these freeze orders when those orders are presumably issued under some probable cause and then no action is taken. As a matter of fact, many people are already criticizing that from the time of the creation of the PCGG no single action has been filed with the Sandiganbayan, and the purpose of these six months is to require the PCGG to follow up the sequestration or freeze order with the necessary complaint leading to the forfeiture of these supposed unlawfully acquired properties or ill-gotten wealth.

MR. RAMA: Madam President.

MR. BENGZON: Madam President, therefore, may I now ask Commissioner Azcuna to pursue his amendment, if he really does intend to pursue it so that we can deliberate and vote on it.

MR. NATIVIDAD: Madam President.

THE PRESIDENT: Commissioner Natividad, is recognized.

MR. NATIVIDAD: Just one question to Commissioner Padilla to clarify in my mind the six-month period of filing the cases. I can see from the records that the statement of PCGG is that they do not issue sequestration orders without prima facie case.

MR. PADILLA: That is the presumption, Madam President, otherwise, it may only be harassment or embarrassment.

MR. NATIVIDAD: That is their statement, Madam President, that they have never issued a sequestration order without first establishing a prima facie case.

MR. PADILLA: That is correct, Madam President.

MR. NATIVIDAD: Under our laws on procedure, a prima facie case is all that is necessary to file the case in court. So, what is stopping them from filing the case? Is it not that not a single case has been filed? And why should they take six months to file a case when before they issue a sequestration order that they have already established not only probable cause but prima facie?

MR. PADILLA: That is the reason that we feel the six-month period for the filing of the proper judicial action after the issuance of the sequestration or freeze order is more than reasonable.

MR. NATIVIDAD: More than reasonable. I agree with the Commissioner, Madam President, that six months time is certainly more than what they give to the fiscals or the investigators in this country. So, if they say they have already established a prima facie case, they can file the case the next day, Madam President.

MR. REGALADO: Madam President.

MR. PADILLA: I understand in criminal cases, when a person is arrested, he is delivered to the judicial authorities. The fiscal is required to file the corresponding information within certain hours only under Article 125 of the Revised Penal Code.

THE PRESIDENT: Commissioner Regalado is recognized.

MR. REGALADO: Madam President, may I just pose two clarificatory questions to Commissioner Padilla? Assuming that this Constitution, with this Transitory Provisions, takes effect about, say, January of next year, will this also apply to the sequestration or freeze orders which may have been issued before wherein the six-month period has already elapsed?

MR. PADILLA: Yes, Madam President. The idea is, the six-month period is to be counted from the date of the issuance of a specific sequestration or freeze order.

MR. REGALADO: But suppose the sequestration orders were issued, let us say, about May. So, definitely, as of the time this Transitory Provisions becomes effective, the six-month period has already expired.

MR. PADILLA: That is why the PCGG should file, within six months, the corresponding judicial action counted from, in your example, May 1986 — if that was the date of the issuance of the sequestration or freeze order which

is presumed to have been based on some probable cause.

MR. REGALADO: In other words, the PCGG — although the six-month period has not yet become effective — must move now to beat the prospective possibility that this will be effective, say, in December or January.

MR. PADILLA: As a matter of fact, even under the Freedom Constitution and the executive orders, the idea is that after the freeze order, an action will be filed. This is nothing new. It is, I believe, expressly stated or at least reasonably implied, because we cannot expect the PCGG just to be issuing the sequestration or freeze orders without some basis. And if they have a basis, as we presume they have, then the corresponding action should be filed. Under RA 1379, regarding the Anti-Graft Law for the recovery of unlawfully acquired properties or ill-gotten wealth, there is a presumption against properties or assets that are manifestly out of proportion, as presumed fraudulent. That is Section 1. But Section 2 provides that the Solicitor General shall file the corresponding petition.

MR. REGALADO: Madam President, a second question, still on the six-month period and this would refer to sequestration or freeze orders issued heretofore or which may be issued in the future. If the corresponding action is not filed within the six-month period, what would be the legal effect? Would the sequestration order be automatically lifted? And if it is lifted, may the PCGG thereafter resort to the resequestration of the same property?

MR. PADILLA: That is for the courts to decide. While this provision contemplates an action to be filed by the PCGG, this also does not deprive the aggrieved party from going to the courts for relief.

MR. REGALADO: In other words, we do not decide here now what would be the effect of the nonfiling of the action within the six-month period that we ordain to be observed

MR. PADILLA: We do not discuss the effect. That will be for the courts to decide.

MR. RAMA: Madam President.

THE PRESIDENT: The Floor Leader is recognized.

MR. RAMA: May I ask that Commissioner Azcuna be recognized to file his amendment to the amendment?

THE PRESIDENT: Commissioner Azcuna is recognized.

MR. AZCUNA: Thank you, Madam President.

I would like to propose an amendment to the Villacorta amendment, Madam President. The second paragraph should read: "THE CORRESPONDING JUDICIAL ACTION SHALL BE FILED WITHIN SIX MONTHS FROM THE RATIFICATION OF THIS CONSTITUTION OR THE ISSUANCE OF THE ORDER." "ORDER" here refers to the sequestration or freeze order and it is understood that whichever of these two periods is later in point of time will govern.

MR. BENGZON: Madam President, may I ask a question?

MR. PADILLA: In my point of view, Madam President, I do not accept the proposed amendment.

THE PRESIDENT: Commissioner Bengzon is recognized.

MR. BENGZON: When the Commissioner says "AFTER THE ISSUANCE OF THE ORDER," it would read that it is within six months from the ratification of the Constitution or the issuance of said order.

MR. AZCUNA: Yes. Madam President.

MR. BENGZON: It gives the impression that if the order was issued four months ago, the PCGG has only two months.

MR. PADILLA: No.

MR. AZCUNA: Yes. It is understood, Madam President, whichever is later.

MR. BENGZON: Which means to say then that, if the order was issued four months ago, the filing of the case is to be done six months from the ratification of the Constitution. Is that correct?

MR. AZCUNA: Yes, Madam President. The intention is to give them at least six months after the ratification of the new Constitution.

MR. BENGZON: So it is as if the previous four months has been erased. The six months begins from the time the Constitution is ratified.

MR. AZCUNA: Yes, Madam President. The mention of the word "ORDER" refers to the new orders or the issuance of new orders after the ratification of the Constitution.

MR. BENGZON: Thank you.

MR. VILLACORTA: Madam President.

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Padilla is recognized.

MR. PADILLA: Madam President, we should be distinguishing between the 18 months' time after the ratification which allows the PCGG to continue its functions but with regard to the filing of the corresponding action, they should not depend upon the ratification of the Constitution because then we will make no distinction between the 18-month period or this PCGG issuing its sequestration or freeze orders and those that have already been issued under probable cause. The purpose is to expedite certain action and in the meantime to give the parties adversely affected an opportunity for due process in court with notice and hearing. If we make the six months after the ratification, that might mean that the PCGG will not file any action until, let us say, more than one year.

MR. GUINGONA: Madam President.

THE PRESIDENT: Commissioner Bengzon is recognized.

MR. BENGZON: Madam President, I do not think that there is any question as to the 18-month period because the 18-month period refers only to the right of the PCGG within which to issue sequestration orders. What we are talking about here is the period within which PCGG should file the case in court from the time they issued the sequestration order and those situations where sequestration orders have already been issued even at this time prior to the ratification of this Constitution and the period of six months has either elapsed or has already begun.

MR. VILLACORTA: Madam President.

MR. GUINGONA: Madam President.

MR. BENGZON: What we are saying here, Madam President, is that the mandate of the Constitution on the PCGG to file the case within this period of six months should begin from the ratification of the Constitution.

THE PRESIDENT: That is the Azcuna amendment.

MR. BENGZON: Yes, the Azcuna amendment, Madam President.

MR. GUINGONA: Madam President.

THE PRESIDENT: Commissioner Guingona is recognized.

MR. GUINGONA: May I just make this observation that before the ratification of this Constitution, there will be no legal basis for the PCGG to act as per proposal of the honorable Vice-President because there is no legal basis for the PCGG to file within six months since the Constitution has not yet been ratified.

MR. RAMA: Madam President, the amendment to the amendment has been sufficiently debated.

THE PRESIDENT: May we hear first Commissioner Azcuna for his explanations with respect to those questions that have come up.

MR. AZCUNA: Yes, I will add a last phrase, "WHICHEVER IS LATER," Madam President to make it clear. So that it will read: "THE CORRESPONDING JUDICIAL ACTION SHALL BE FILED WITHIN SIX MONTHS FROM THE RATIFICATION OF THIS CONSTITUTION OR THE ISSUANCE OF THE ORDER, WHICHEVER IS LATER."

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: May I propose the following amendment to clarify between orders issued before the ratification and orders issued after the ratification. So my proposal reads as follows: FOR SEQUESTRATION OR FREEZE ORDERS ISSUED BEFORE THE RATIFICATION OF THIS CONSTITUTION THE CORRESPONDING JUDICIAL ACTION OR PROCEEDING SHALL BE FILED WITHIN ONE MONTH FOLLOWING SUCH RATIFICATION. FOR THOSE ISSUED THEREAFTER, THE JUDICIAL ACTION SHALL BE FILED WITHIN ONE MONTH AFTER THE ISSUANCE THEREOF."

MR. AZCUNA: Is it one month?

MR. DAVIDE: "ONE MONTH AFTER THE ISSUANCE THEREOF." It was already stated that before a freeze or sequestration order is issued, the PCGG has already determined the existence of a prima facie case and, therefore, why wait for six months?

MR. AZCUNA: I will accept three months, Madam President.

MR. DAVIDE: Three months. I agree, Madam President.

MR. ROMULO: Madam President.

THE PRESIDENT: The original proponent of this was Commissioner Villacorta.

MR. ROMULO: Yes. On behalf of Commissioner Villacorta, we will insist on six months. The reason for this is that the original case, as I explained yesterday, filed with the PCGG has 28 respondents. It is now undergoing preliminary investigation. Each of the respondents has a lawyer or lawyers; each wants to present his own evidence. Some have gone up to the Supreme Court on certiorari. That is what occasions the delay and the inability of the Solicitor General to file the case with the Sandiganbayan. They want to complete the preliminary investigation.

Thus, with these old cases, we would like them to be treated on the same basis as the new, and that is a uniform period of six months. That is why we agreed to the original Azcuna amendment. But we would agree with Commissioner Davide's reformulation provided the period is six months.

MR. DAVIDE: A uniform period of six months.

MR. ROMULO: Yes.

THE PRESIDENT: So how is it now?

MR. RAMA: We can vote now, Madam President.

MR. AZCUNA: May we ask Commissioner Davide to read his proposed amendment.

MR. DAVIDE: As reformulated, Madam President, the second paragraph will read: "FOR SEQUESTRATION OR FREEZE ORDERS ISSUED BEFORE THE RATIFICATION OF THIS CONSTITUTION, THE CORRESPONDING JUDICIAL ACTION OR PROCEEDING SHALL BE FILED WITHIN SIX MONTHS FOLLOWING SUCH RATIFICATION. FOR THOSE ISSUED THEREAFTER, THE JUDICIAL ACTION OR PROCEEDING SHALL BE FILED WITHIN SIX MONTHS AFTER THE ISSUANCE THEREOF."

MR. AZCUNA: We accept, Madam President.

THE PRESIDENT: How about the last sentence?

MR. AZCUNA: That was already transferred to the first paragraph, Madam President.

MR. VILLACORTA: Madam President, we accept the amendment and we would like to request a voting on it.

MR. PADILLA: Madam President, with regard to the first sentence of the second paragraph which reads: "SAID ORDER AND LIST OF THE SEQUESTERED PROPERTIES," can we say "SEQUESTERED OR FROZEN ASSETS" instead of only "PROPERTIES"?

THE PRESIDENT: Is that accepted by the committee?

MR. SUAREZ: We are trying to clarify the entire clause, Madam President. Is the amendment "SEQUESTERED OR FROZEN ASSETS OR PROPERTIES"?

MR. DAVIDE: May I propose an amendment to that, Madam President?

THE PRESIDENT: Commissioner Davide may please proceed.

MR. DAVIDE: The proposal would read: "SUCH ORDER AND A LIST OF THE PROPERTIES SUBJECT THEREOF SHALL BE REGISTERED."

THE PRESIDENT: Is there any additional manifestation?

Commissioner Romulo is recognized.

SUSPENSION OF SESSION

MR. ROMULO: Perhaps, Madam President, we should have a suspension to coordinate this with the committee.

May I ask for a suspension, Madam President.

THE PRESIDENT: The session is suspended.

It was 12:41 p.m.

RESUMPTION OF SESSION

At 12:47 p.m., the session was resumed.

THE PRESIDENT: The session is resumed.

SUSPENSION OF SESSION

MR. RAMA: Madam President, I ask for a suspension of the session until two-thirty this afternoon.

THE PRESIDENT: The session is suspended until two-thirty this afternoon.

It was 12:47 p.m.

RESUMPTION OF SESSION

At 2:58 p.m., the session was resumed with the Honorable Efrain B. Treñas presiding.

THE PRESIDING OFFICER (Mr. Treñas): The session is resumed.

Will the chairman and the members of the committee take their seats in front?

MR. BENGZON: May we request the chairman of the committee to read the reformulated section, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Suarez may please proceed.

SUSPENSION OF SESSION

MR. SUAREZ: May we ask for a suspension of the session in order that we can read the mangled section, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): The session is suspended.

It was 2:59 p.m.

RESUMPTION OF SESSION

At 3:12 p.m., the session was resumed.

THE PRESIDING OFFICER (Mr. Treñas): The session is resumed.

The Floor Leader is recognized.

MR. RAMA: Mr. Presiding Officer, I ask that the committee chairman be recognized.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Suarez is recognized.

MR. SUAREZ: Thank you, Mr. Presiding Officer.

It appears that our photocopying machine is not in good order, so they have to go to the other building to have it reproduced. In the meantime, may I be allowed to read the entire proposed section, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Suarez may please proceed.

MR. SUAREZ: "THE AUTHORITY TO ISSUE SEQUESTRATION OR FREEZE ORDER IN RELATION TO THE RECOVERY OF ILL-GOTTEN WEALTH SHALL CONTINUE TO BE OPERATIVE EIGHTEEN MONTHS AFTER THE RATIFICATION OF THIS CONSTITUTION. CONGRESS, IN THE NATIONAL

INTEREST, AS CERTIFIED BY THE PRESIDENT, MAY EXTEND SAID PERIOD." This is a further amendment introduced by Commissioner Davide. Then this line: "SUCH ORDER SHALL BE ISSUED ONLY UPON SHOWING OF A PRIMA FACIE CASE," is the Ople amendment, Mr. Presiding Officer.

The second paragraph reads: "THE ORDER AND THE LIST OF THE SEQUESTERED OR FROZEN PROPERTIES SHALL BE FORTHWITH REGISTERED WITH THE PROPER COURTS." This is the Concepcion amendment. "FOR SEQUESTRATION OR FREEZE ORDERS ISSUED BEFORE THE RATIFICATION OF THIS CONSTITUTION, THE CORRESPONDING JUDICIAL ACTION OR PROCEEDING SHALL BE FILED WITHIN SIX MONTHS FROM THE RATIFICATION OF THE CONSTITUTION. FOR THOSE ISSUED AFTER SUCH RATIFICATION, THE JUDICIAL ACTION OF PROCEEDING SHALL BE FILED WITHIN SIX MONTHS FROM THE ISSUANCE THEREOF." This is the Padilla and Azcuna amendment.

The third paragraph reads: "THE SEQUESTRATION OR FREEZE ORDER SHALL BE AUTOMATICALLY LIFTED IF THE JUDICIAL ACTION OR PROCEEDING IS NOT FILED AS HEREIN PROVIDED, UNLESS PREVENTED BY EXTRAORDINARY CIRCUMSTANCES." This is the Regalado and Colayco amendment.

That is the complete section composed of three paragraphs, Mr. Presiding Officer.

MR. SARMIENTO: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Sarmiento is recognized.

MR. SARMIENTO: May I address one question to the committee in the absence of Chief Justice Concepcion? This is in connection with the Concepcion amendment.

Is the committee contemplating of that provision in the Rules of Court which states that after search and seizure the officers who conducted the search and seizure shall prepare a list or inventory of materials seized and thereafter shall forthwith submit this list to the court? Is the committee contemplating of that situation, Mr. Presiding Officer, in connection with the word "registered" with the proper courts?

MR. SUAREZ: That is the contemplation of the committee in regard to this particular sentence, Mr. Presiding Officer.

MR. SARMIENTO: May we know the purpose of this registration of the order and list of sequestered properties?

MR. SUAREZ: First, this is going to serve as the basis for the subsequent filing of the complaint. Second, the proper court would be in a position to consider all of those properties now under custodia legis. The third is to enable the parties to seek judicial relief at the earliest possible time. And the fourth is — the list already registered with the court cannot be tampered with. Those more or less are the reasons for the insertion of this particular sentence, Mr. Presiding Officer.

MR. SARMIENTO: Thank you, Mr. Presiding Officer.

REV. RIGOS: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Rigos is recognized.

REV. RIGOS: I just want to ask the committee. I think the third sentence begins with the words "SUCH ORDER . . ." Will the Gentleman please read the third sentence?

MR. SUAREZ: The third sentence reads: "THE SEQUESTRATION OR FREEZE ORDER SHALL BE AUTOMATICALLY LIFTED IF THE JUDICIAL ACTION OR PROCEEDING IS NOT FILED AS HEREIN

PROVIDED, UNLESS PREVENTED BY EXTRAORDINARY CIRCUMSTANCES."

REV. RIGOS: Is that the third sentence?

MR. SUAREZ: That is the third paragraph.

"THE ORDER AND THE LIST OF THE SEQUESTERED OR FROZEN PROPERTIES SHALL BE FORTHWITH REGISTERED WITH THE PROPER COURTS." Is Commissioner Rigos referring to that sentence, Mr. Presiding Officer?

REV. RIGOS: Will the Gentleman please read the first sentence.

MR. SUAREZ: The first sentence is: "THE AUTHORITY TO ISSUE SEQUESTRATION OR FREEZE ORDER IN RELATION TO THE RECOVERY OF ILL-GOTTEN WEALTH SHALL CONTINUE TO BE OPERATIVE EIGHTEEN MONTHS AFTER THE RATIFICATION OF THIS CONSTITUTION."

REV. RIGOS: Then the second sentence?

MR. SUAREZ: "CONGRESS, IN THE NATIONAL INTEREST, AS CERTIFIED BY THE PRESIDENT, MAY EXTEND SAID PERIOD. SUCH ORDER SHALL BE ISSUED ONLY UPON SHOWING OF A PRIMA FACIE CASE."

REV. RIGOS: I am referring to that sentence. When we say "SUCH ORDER," are we referring to the orders in the first sentence?

MR. SUAREZ: The sequestration or freeze order.

REV. RIGOS: Yes. The point here is that we have broken the trend of thought by the second sentence there. So probably instead of putting a period (.) after this "EIGHTEEN MONTHS AFTER THE RATIFICATION OF THIS CONSTITUTION," we may have to put a semicolon (;) so that the first two sentences there can become one sentence.

MR. SUAREZ: In other words, after the words "THE RATIFICATION OF THIS CONSTITUTION" put a semicolon (;) and reinstitute the phrase "PROVIDED THAT CONGRESS, IN THE INTEREST . . ."

REV. RIGOS: That will be my suggestion.

MR. SUAREZ: There is logic in it, Mr. Presiding Officer. We accept it.

MR. ROMULO: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Romulo is recognized.

MR. ROMULO: Just a few questions to the committee. For the record, Mr. Presiding Officer, when we say "REGISTER THE SEQUESTRATION OR FREEZE ORDER," are we not implying that the PCGG will be deprived of its jurisdiction?

MR. SUAREZ: No, definitely not, Mr. Presiding Officer.

MR. ROMULO: Therefore, the PCGG may continue with the preliminary investigation of the case which succeeds the issuance of a sequestration order?

MR. SUAREZ: Yes, Mr. Presiding Officer.

MR. ROMULO: Yes. Thank you.

My second question is with regard to the Regalado amendment which speaks of lifting the sequestration order if a case is not filed within six months. Is that without prejudice that if the PCGG comes with new evidence, it may again sequester?

MR. SUAREZ: I think that is without precluding that right on the part of the PCGG on the basis of new evidence.

MR. ROMULO: Thank you.

MR. DAVIDE: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Davide is recognized.

MR. DAVIDE: May I further propose some amendments to the first sentence? I propose to substitute "CONTINUE TO BE" with the word "REMAIN." And before "EIGHTEEN MONTHS," I propose the following insertion "FOR NOT MORE THAN."

To give some degree of flexibility, the President herself may reduce the period before the convening of Congress.

MR. SUAREZ: "REMAIN TO BE OPERATIVE FOR NOT MORE THAN EIGHTEEN MONTHS"?

MR. DAVIDE: Yes, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): What does the committee say?

MR. SUAREZ: The committee accepts the amendment.

REV. RIGOS: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Rigos is recognized.

REV. RIGOS: My comment there, Mr. Presiding Officer, is that if we say "FOR NOT MORE THAN EIGHTEEN MONTHS," we give Congress the power to extend the period, if it is to the national interest and certified to by the President. Perhaps, the original wording is better.

MR. DAVIDE: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Davide is recognized.

MR. DAVIDE: It will not deprive Congress to extend the period, in the national interest, as certified by the President because that is precisely the proviso which is covered by the second sentence.

FR. BERNAS: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Bernas is recognized.

FR. BERNAS: May I offer an amendment to delete the sentence starting with "CONGRESS"?

MR. SUAREZ: "Provided that"?

FR. BERNAS: Yes, "PROVIDED THAT CONGRESS."

The reason being that 18 months would mean practically two years from now. We should not unduly prolong this period of allowing a government agency to disregard the search and seizure clause.

MR. SUAREZ: The committee position is that this has created a lot of agitations. We leave it rather to the wisdom of the body, Mr. Presiding Officer.

FR. BERNAS: May we then ask for a vote, Mr. Presiding Officer?

MR. RAMA: The body is ready to vote on that amendment to the amendment.

FR. BERNAS: To delete "PROVIDED THAT CONGRESS MAY."

MR. SUAREZ: The whole phrase to be deleted would read as follows: "PROVIDED THAT CONGRESS, IN THE NATIONAL INTEREST, AS CERTIFIED BY THE PRESIDENT, MAY EXTEND SAID PERIOD."

FR. BERNAS: Yes, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): Is there any comment before we vote?

MR. COLAYCO: Yes, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Colayco is recognized.

MR. COLAYCO: I am not too sure about the nature of the pending cases before the Supreme Court involving the PCGG. If under these cases now before the Supreme Court, the Supreme Court can prescribe, can rule upon the power of the PCGG to issue these orders of sequestration and freezing orders or if the Supreme Court can order the PCGG henceforth to file all sequestration proceedings before the regular courts or before the Sandiganbayan, would not this Transitory Provisions raise questions of jurisdiction and certainly raise a lot of legal confusion?

I would like to hear the opinion of the committee on that point, Mr. Presiding Officer.

MR. SUAREZ: We are sorry because we are not paying attention. We were reading the new draft. Will the Gentleman kindly repeat the question.

MR. COLAYCO: Right now, there are Several petitions pending before the Supreme Court involving the PCGG's power to freeze and to sequester assets which are suspected to belong to the former President and his cronies. Under our proposed Transitory Provisions, we are setting certain rules or guidelines to be followed by the PCGG after the ratification of the Constitution. My question is: Would this not stop the Supreme Court from continuing any further proceedings under the pending petitions before it?

MR. SUAREZ: We do not think so. Those cases should be governed by the laws existing at the time they were filed in court. And this section under consideration would have to have prospective effect, Mr. Presiding Officer.

MR. COLAYCO: No, Mr. Presiding Officer. My point is this: Assuming that anyone or all of the petitions are now pending before the Supreme Court, a question is involved of whether the PCGG should file the proceedings for sequestration before the Sandiganbayan or the regular courts.

MR. SUAREZ: Then this provision, as suggested by Commissioner Azcuna, would apply. That is to say, after the ratification of the Constitution.

MR. COLAYCO: No, I am speaking of before the ratification.

MR. SUAREZ: That is why there is also a provision here, Mr. Presiding Officer, regarding sequestration orders issued before the ratification of this Constitution. They are given six months after the ratification of the Constitution within which to file the judicial action or proceeding. Commissioner Colayco is talking about Supreme Court cases being ventilated or having been filed by the aggrieved parties.

MR. COLAYCO: Against the PCGG, because according to them, they are not following the Bill of Rights.

MR. SUAREZ: That is right. So, I think it would be affected only in one instance. It is the determination of whether or not the writ of sequestration or freeze order had been issued on basis of a prima facie evidence.

MR. COLAYCO: No.

MR. SUAREZ: That is the only area where I can perceive we may have a little difficulty, Mr. Presiding Officer.

MR. COLAYCO: But suppose the Supreme Court finds and rules that the procedure followed now by the PCGG is really a violation of the Constitution and, therefore, if we approve this provision and it is ratified, would that, in effect, stop the Supreme Court from taking any further jurisdiction over the cases?

MR. SUAREZ: I do not believe so, Mr. Presiding Officer. That is the feeling of the committee that that can proceed independently of the operativeness of this provision.

MR. COLAYCO: Suppose the Supreme Court says that henceforth they have to go through the regular courts. Can PCGG not say, "Wait a minute"? The Constitution says we can do it here because we have been given 18 months.

MR. SUAREZ: That is exactly what we are trying to say, Mr. Presiding Officer. The authority to continue issuing these sequestration and freeze orders will be for a period of 18 months. As the Gentleman has been saying, these sequestration and freeze orders had already been issued. In fact, the matter had already been elevated to the Supreme Court. And now, upon the elevation to the Supreme Court, what will happen to all of these pending cases in the Supreme Court on the strength of this provision?

MR. COLAYCO: After ratification?

MR. SUAREZ: Yes. We are saying that this provision will not affect those pending cases, Mr. Presiding Officer. Except for one thing, and that is to say, that the PCGG is now obligated within the required period of six months after the ratification of the Constitution to go to the courts, let us say, the Sandiganbayan, in a judicial proceeding or action where they can ventilate the rights of the government.

That is how the committee perceives it, Mr. Presiding Officer.

MR. COLAYCO: I do not think I have explained myself clearly.

MR. BENGZON: Mr. Presiding Officer, may I offer an answer to the question of Commissioner Colayco?

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Bengzon may please proceed.

MR. BENGZON: The way I understand it, Mr. Presiding Officer, Commissioner Colayco is referring to those cases that are pending before the Supreme Court, and before the ratification of this Constitution, the Supreme Court hands down a decision which tells the PCGG to follow the provisions of the Bill of Rights under the 1973 Constitution and under the Freedom Constitution. His question is: What happens to those cases after this Constitution is ratified? Am I correct?

MR. COLAYCO: No, Mr. Presiding Officer.

MR. BENGZON: Do I understand the Gentleman's question correctly?

MR. COLAYCO: What I am saying is this: Let us suppose the Supreme Court says before this is ratified that, henceforth all these cases now of sequestration must be cancelled and the PCGG must go through the courts?

MR. BENGZON: My answer is: That particular decision of the Supreme Court cannot be considered a precedent if the people ratify this Constitution. That ruling of the Supreme Court is repealed, so to speak, by this provision of this Constitution. So that all cases after the ratification of the Constitution must follow this particular provision. Insofar as those cases are concerned, then the PCGG is bound by the ruling of the Supreme Court, unless there is a newly discovered evidence and a new set of evidence is unearthed and uncovered, in which case a new sequestration order shall be issued under this provision of the Constitution.

MR. COLAYCO: One point which I want to raise is this: Why are we meddling with the power which resides in the Supreme Court under our Constitution? What business does our Commission have to make a ruling on cases which are already pending before the Supreme Court?

MR. ROMULO: Mr. Presiding Officer, may I comment?

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Romulo is recognized.

MR. BENGZON: We do not feel that that is meddling. Precisely, this Commission is defining the authority of the PCGG insofar as this matter is concerned.

MR. COLAYCO: I am just raising this question. It depends now on the body to vote on it or not, but I am afraid that we are heading towards a very stormy weather after this.

MR. ROMULO: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Romulo is recognized.

MR. ROMULO: The hypothetical case Commissioner Colayco raises will never happen under the 1973 Constitution, because the Bill of Rights of the 1973 Constitution which is confirmed by the Freedom Constitution allows nonjudicial officers to issue search warrants.

MR. RAMA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): The Floor Leader is recognized.

MR. RAMA: We are now ready to vote on the motion to delete.

MR. SUAREZ: I think we are still on the Bernas motion to delete.

MR. RAMA: Yes, precisely, because that is the anterior motion.

MR. ROMULO: Will the chairman please read the portion to be deleted.

MR. SUAREZ: Yes, let me read the portion that is sought to be deleted by Commissioner Bernas. It reads: "PROVIDED THAT CONGRESS, IN THE NATIONAL INTEREST, AS CERTIFIED BY THE PRESIDENT, MAY EXTEND SAID PERIOD." That is on lines 4, 5 and 6 of the proposed section, Mr. Presiding Officer.

MR. ROMULO: Yes, the committee would oppose the deletion and as I understand it, this is an original formulation of the committee.

MR. SUAREZ: Yes.

VOTING

THE PRESIDING OFFICER (Mr. Treñas): As many as are in favor of the motion of Commissioner Bernas to delete the lines read by Chairman Suarez, please raise their hand. (Few Members raised their hand.)

As many as are against, please raise their hand. (Several Members raised their hand.)

As many as are abstaining, please raise their hand. (Four Members raised their hand.)

The results show 5 votes in favor, 23 against and 4 abstentions; the motion to delete is lost.

FR. BERNAS: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Bernas is recognized.

FR. BERNAS: May I offer one amendment by addition which reads: "ALL IMMUNITIES GRANTED IN CONNECTION WITH THE POWER TO ISSUE SEQUESTRATION OR FREEZE ORDERS ARE HEREBY REPEALED." This specifically refers to the immunity from civil action and also the immunity from being required to testify or produce evidence, both of which are contained in Section 4 of Executive Order No. 1. The reason behind my amendment is that we put a very high premium on accountability of public officers. This immunity given by paragraph (a) of Section 4 runs counter to this accountability and the immunity from testifying or from producing evidence given by paragraph (b) of Section 4 will, in effect, be an obstruction to justice.

MR. DAVIDE: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Davide is recognized.

MR. DAVIDE: Would the proponent yield to some questions?

FR. BERNAS: Yes, Mr. Presiding Officer.

MR. DAVIDE: The Commissioner stated that the immunity provision granted to the proclamation creating the PCGG would be inconsistent with the principle on accountability of public officers as mandated in the proposed new Constitution. Did I get the Commissioner correctly, Mr. Presiding Officer?

FR. BERNAS: Yes, Mr. Presiding Officer.

MR. DAVIDE: We have a corresponding provision on the Article on Transitory Provisions to the effect that all laws, proclamations, executive orders, presidential issuances or executive issuances or letters of instructions not consistent with this Constitution would be deemed repealed. Would his proposal not be fully covered by that general repealing clause under the Article on Transitory Provisions, if indeed the immunity provision would be inconsistent with the accountability of public officers provision?

FR. BERNAS: It might or it might not be, Mr. Presiding Officer. We do not want to leave any doubt.

MR. DAVIDE: But would it not suffice if we place that interpretation here that that particular provision on immunity would indeed be inconsistent with the mandate regarding accountability of public officers?

FR. BERNAS: That would not be strong enough, Mr. Presiding Officer, because records do not become part of the law. They are only part of the interpretation of the law. They are of secondary value.

MR. DAVIDE: Thank you for the clarification.

MR. SUAREZ: May I ask for a committee clarification, Mr. Presiding Officer?

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Suarez is recognized.

MR. SUAREZ: When the Commissioner speaks of "immunities," Mr. Presiding Officer, is he referring to the provisions of Executive Order No. 1 issued on February 28, 1986, particularly, Sections 4 (a) and (b)?

FR. BERNAS: That is correct, Mr. Presiding Officer.

MR. SUAREZ: And Section 4(a) refers to civil immunity from suit.

FR. BERNAS: Yes, Mr. Presiding Officer.

MR. SUAREZ: And Section 4(b) refers to immunity from testifying?

FR. BERNAS: And producing evidence.

MR. SUAREZ: And producing evidence.

FR. BERNAS: The effect.

MR. SUAREZ: Other than those, is the Commissioner referring to other immunities enjoyed by the PCGG or any of its officials, agents or representatives, Mr. Presiding Officer?

FR. BERNAS: These are the ones I have in mind, Mr. Presiding Officer. I am not referring to immunity which may be granted to those who may testify.

MR. SUAREZ: Yes. And he is referring particularly to immunity provisions, not to immunities enjoyed by the PCGG?

FR. BERNAS: I am referring to the immunity provision found in Sections 4(a) and (b), Mr. Presiding Officer.

MR. SUAREZ: Yes. Thank you, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Sarmiento is recognized.

MR. SARMIENTO: Thank you, Mr. Presiding Officer. With due respect to our beloved Commissioner, may I object to the proposed amendment?

Briefly, may I state the reasons, Mr. Presiding Officer. We are recommending that proposed amendment supportive of the committee's amendment because of our desire more than anything else to recover the Marcos' and their cronies' ill-gotten wealth, a product of a systematic plunder. The proposed amendment, I believe, will paralyze, if not completely immobilize, PCGG's operations against the ill-gotten wealth. Suits will be filed left and right against the PCGG, thereby eroding its mission.

In actual practice, Mr. Presiding Officer, the ardor of one pursuing a case is undermined the moment a countercharge is filed against him. This proposed amendment to remove that immunity clause could be an Achilles' heel that could be exploited by the enemies of PCGG.

So, I thereby oppose the proposed amendment.

FR. BERNAS: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Bernas is recognized.

FR. BERNAS: This proposed amendment for the repeal of immunities is really in answer to the clamor against the abuses that are being committed. And these alleged abuses are either true or false. If they are false, then the commission should have nothing to fear. If they are true, then the commission should be made to answer for it.

MR. REGALADO: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Regalado is recognized.

MR. REGALADO: I am constrained to oppose the position of Commissioner Bernas. It will be noted that Section 4, paragraph (a), which grants that immunity, actually states:

No civil action shall lie against the Commission or any Member thereof for anything done or omitted in the discharge of the task contemplated in this order.

I will repeat that: "in the discharge of the task contemplated in the order." If he should perform any act prejudicial to or resulting in damages to another, but not in the discharge of the task, he will not enjoy that immunity.

Secondly, on pragmatic grounds, it is very easy to prepare a civil complaint. As a matter of fact, it would have been different if a criminal case will be involved, because as we all know, before the information can be filed, it

will have to go through the process of preliminary investigation, the refining and the determination as to whether really it should be filed. But in a civil case, anybody who would like to harass the members of the PCGG who are only acting in the discharge of their duties can prepare a hundred complaints in just one day, because there is no preliminary requirement before filing the case in court. Suppose a hundred people are involved in just one sequestration matter and instead of being parties to just one complaint, they disregard the rule on permissive joinder of parties, what is there to prevent them from respectively filing separate complaints in their own respective individual behalf, each with a different venue, depending on their residence?

Then, the members of this commission would be facing civil cases left and right to the detriment of the performance of their duties because they have to prepare for defense. But more importantly, I emphasize that the scope of the immunity is too limited. It is really limited only to acts committed by them in the actual discharge of duties. They are not given a blanket immunity. The moment they stray from that straight and narrow path, they are immediately civilly and criminally liable.

MR. MAAMBONG: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Maambong is recognized.

MR. MAAMBONG: Will Commissioner Bernas yield to just one or two questions?

I just want this clarified, Mr. Presiding Officer. The Commissioner's proposed amendment seeks to eliminate the immunity given to the commission or any member thereof under Section 4, paragraph (a). The proposed amendment also seeks to take away the immunity to any member or staff of the commissioner under Section 4, paragraph (b).

FR. BERNAS: Yes, Mr. Presiding Officer.

MR. MAAMBONG: The proposed amendment does not seek to take away the authority of the Presidential Commission on Good Government to grant immunity from criminal prosecution to any person under Section 5 of Executive Order No. 14.

FR. BERNAS: Yes, I already said that to the same question of Commissioner Suarez, Mr. Presiding Officer.

MR. MAAMBONG: So, these are all the three cases of immunity which he seeks to be deleted from these Executive Order Nos. 1 and 14.

FR. BERNAS: Yes, Mr. Presiding Officer.

MR. MAAMBONG: Thank you.

FR. BERNAS: Let me add that with respect to paragraph (a) of Section 4, the subject of the suit here would be, if in the discharge of the task contemplated by this order, PCGG commits an atrocious act not covered by immunity.

MR. MAAMBONG: Thank you.

MS. AQUINO: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Aquino is recognized.

MS. AQUINO: May I just be allowed to reply briefly to the argument of Commissioners Sarmiento and Regalado in support of the motion for the inclusion of this provision.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Aquino may proceed.

MS. AQUINO: For all of its broad and extraordinary powers, the PCGG still has to enjoy immunity from civil

suits arising from the discharge of its responsibilities and further, according to paragraph (b) of Section 4, it may refuse to testify or introduce evidence in all legislative, judicial and administrative agencies which may properly belong in its official cognizance.

It is precisely this privilege and this immunity that have emboldened some of the agents of the PCGG to commit wholesale violation of the Bill of Rights and maybe even, as it has happened, to flagrantly violate some of the court orders. This is a sign of an immunity clause that is at war with the Constitution and with the idea of the government of laws and not of men. It is an anathema to the requirements of due process because in the final analysis, it leaves without any remedy, any effective remedy, to any person who has been aggrieved by the violations of the rights committed by the PCGG agents. They may be either in the form of blatantly illegal acts or may be in the form of mismanagement of their sequestered properties.

Mr. Presiding Officer, further, the immunity clause is subversive of judicial powers in the sense that it cripples and puts a restraint on the power of the judiciary to gather evidence against the persons when presented with a case that would serve to adjudicate the rights or the final rights of ownership on the sequestered properties. In the end, therefore, it would deny a person the right to confront a witness. And, finally, we can say that this kind of an immunity clause runs against the equal protection of the laws because it would put the accused in a sequestration proceeding in a classification that is above and beyond those who are similarly situated in cases that have been filed according to the Anti-Graft And Corrupt Practices Law.

Years ago, during Marcos time, he bamboozled the population into ratifying a provision which will give him and his minions immunity from all suits arising from their acts and orders. We have this again here. Practically, the immunity serves as a shield for reviews. And I suppose we have learned enough.

Thank you, Mr. Presiding Officer.

MR. SARMIENTO: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Sarmiento is recognized.

MR. SARMIENTO: May I be allowed to ask a few questions of Commissioner Aquino? But before I do that, may I just inform the body that Executive Order No. 8, creating the Presidential Committee on Human Rights, also contained an immunity clause. Section 6 provides that presidential immunity shall extend to the members and staff of the committee when acting within their duties, functions, powers and authority. We have also another provision in the same Executive Order No. 8, Section 5, paragraph (b), which provides that the committee shall have the power to grant immunity from prosecution to any person whose testimony or whose possession of documents or other evidence is necessary or convenient to determine the truth in any investigation conducted by its or under its authority. In other words, the PCGG is not the only entity that has these immunity powers. Even the PCHR has this immunity privilege, as contained in Executive Order No. 8, because of the nature of its functions.

MS. AQUINO: Mr. Presiding Officer, this Representation is aware of that. I am aware that the PCHR also enjoys such privilege. But we have to recognize that it is only the PCGG that is blighted with, confessed and admitted commissions of certain violations. Even the Solicitor General himself, in the case of VASECO, admitted that there are some agents who can be correctly brought to court for certain liabilities and accountability according to law. In fact, I think we have to admire the Solicitor General for his candor and frankness. And happily for all of us, the PCHR is not in any position, for example, to misappropriate the properties of sequestered firms. It is not in a position to malverse properties and funds because, after all, the PCHR deals in a field of reality that is totally different from the concerns of the PCGG.

MR. SARMIENTO: Mr. Presiding Officer, may I be allowed to ask a few questions.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Sarmiento may please proceed.

MR. SARMIENTO: In her remarks, she said that the PCGG is guilty of "flagrant violations of human rights."

MS. AQUINO: I said wholesale violation of the Bill of Rights.

MR. SARMIENTO: Yes, wholesale violation and she mentioned "flagrant violation of the Bill of Rights."

MS. AQUINO: Defiance of court orders, not of the Bill of Rights.

MR. SARMIENTO: Yes. May I know from Commissioner Aquino what these wholesale violations are? Are there court findings? Is there a decision that would show that indeed the PCGG is guilty of wholesale violation of human rights except for the remarks of the Solicitor General of irregularities or errors committed by PCGG people?

MS. AQUINO: Mr. Presiding Officer, may I give just one example. It requires only common sense that sequestered shares of stocks, once frozen or put under a writ of garnishment or attachment, does not necessarily include the right to exercise acts of dominion by way of voting. It is common practice that the sequestered shares of stocks are being voted to precisely consolidate the majority claim of the PCGG in terms of charting the corporate course of that sequestered firm. It does not have to take a law to be able to appreciate that kind of a distinction on matters of rights of ownership and acts of dominion as against the right of management pertaining to a writ of attachment on the shares.

MR. SARMIENTO: I still maintain, Mr. Presiding Officer, that the PCGG is not guilty of wholesale violation of the Bill of Rights or flagrant violations of any human right.

THE PRESIDING OFFICER (Mr. Treñas): This matter has been sufficiently discussed.

MR. GUINGONA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Guingona is recognized.

MR. GUINGONA: I just wanted to support the objections raised. First, because the proposal of Commissioner Bernas would render the agency ineffective and its ineffectiveness will redound to the disadvantage of the Filipino people. In the words of Commissioner Rodrigo, it will become a toothless agency. Second, because, as pointed out by Commissioner Regalado, the immunity clause has limited scope and would refer only to acts which are performed in the discharge of the duties of the officers or agents concerned.

Finally, this matter of immunity is not a novel provision. It is found not only in our fundamental law but, as pointed out a while ago, in our statutory law.

Thank you.

MR. OPLE: Mr. Presiding Officer.

MS. AQUINO: Mr. Presiding Officer, just a brief rejoinder to the arguments of Commissioner Sarmiento.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Aquino is recognized.

MS. AQUINO: I was hoping that this Commission would not be consumed by the patriotic arguments of the national interest. I mean, the national interest in view of economic justice and political expediency, having to take primacy over the requirement of the Bill of Rights. My arguments proceed not only from plain and pure legalese, but there are more transcendental considerations, for example, of stability and national unity. This is the kind of a

situation that lends itself to a destructive pattern of speculation that serves as the basis for inquisition. This feeds on the cynicism of the people that has become part of the national psyche. If we do not adopt self-corrective mechanisms, this will become destructive.

MR. MAAMBONG: Mr. Presiding Officer.

MR. OPLE: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Ople is recognized.

MR. OPLE: Will Commissioner Aquino yield to a question?

MS. AQUINO: Yes, Mr. Presiding Officer.

MR. OPLE: I anticipate that by June 30 the new Congress, the first Congress, will be in office. According to a provision in the Article on the Legislative that we approved, either *motu proprio* or on call of the Congress, any public officers shall be required to come in connection with the Question Hour so that they can be questioned about their official actuations. Is this immunity for the PCGG and its members a kind of amendment to this Article on the Legislative because I think under one of those immunities enumerated, they cannot be subject to legislative, administrative and judicial inquiry?

MS. AQUINO: Yes.

MR. OPLE: Does she confirm, therefore, that by virtue of these immunities they are exempt from the purview of the provision in the Article on the Legislative which makes all public officials accountable to the legislature for their official acts during the Question Hour?

MS. AQUINO: If this amendment loses, sadly, I think that would have to be the conclusion; that is, it will be an amendment to the provisions under the Question Hour in the Article on the Legislative.

MR. OPLE: In that respect, therefore, they can have superior rights to all other officials of the government who may be invited or summoned by Congress in the exercise of the Question Hour?

MS. AQUINO: Yes. Precisely, the intent of the provision is to make an explicit provision that will cover this kind of a situation. After all, assuming that the provision on the Question Hour will not yield to the immunity clause of Executive Order Nos. 1, 2 and 14, then this problem is at best symptomatic of a constitutional crisis. For so long this immunity clause exists, it is an incongruity, an incongruity with the Bill of Rights which amounts to the travesty of the concept of the government of laws. No man, not even the President, can go above the law and the courts that uphold it.

MR. OPLE: So that to that extent, the Congress may be deprived of valuable inputs into their studies and deliberations concerning measures to control graft and corruption in the government?

MS. AQUINO: Sadly, yes.

MR. OPLE: Thank you, Mr. Presiding Officer.

MR. MAAMBONG: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Maambong is recognized.

MR. MAAMBONG: Will Commissioner Aquino yield to just one question? Commissioner Aquino seems to indicate that when the PCGG voted sequestered shares of stock, it amounts to a violation of some law or another?

MS. AQUINO: Property rights.

MR. MAAMBONG: Yes.

MS. AQUINO: Because "voting" is an act of dominion and ownership.

MR. MAAMBONG: Yes. But would she maintain the same thinking, Mr. Presiding Officer, that there was a memorandum issued by President Corazon C. Aquino, dated June 26, 1986, authorizing the commission to vote shares of stock which it may have sequestered in corporations?

MS. AQUINO: That does not necessarily give it constitutional regularity. A memorandum is like any other executive act. It, at best, gives a cloak of immunity to the act which is, in the first place, illegal. I would submit.

MR. MAAMBONG: In spite of the fact that as we all know under Proclamation No. 3 this is a revolutionary government.

MS. AQUINO: Yes.

MR. MAAMBONG: Even though this memorandum is issued by the revolutionary government, she would still maintain that this memorandum issued by the President herself is not legal and binding.

MS. AQUINO: Yes. Proceeding from the theory of the poisoned tree, if the tree is poisoned, it can only bear poisoned fruit, and a subsequent act cannot, therefore, legitimize an act which in the beginning has been flawed, seriously flawed, with constitutional infirmity.

MR. MAAMBONG: Thank you very much for that elucidation, Mr. Presiding Officer.

MS. AQUINO: Thank you.

MR. COLAYCO: Just one remark, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Colayco is recognized.

MR. COLAYCO: I am talking about the practicality of enforcing the laws by any public official correctly and within the law even if the immunity from prosecution or responsibility is removed. This is something that all public officials have to face. And it is the existence of this immunity that is the cause of the abuses that have been attributed to the agents of the PCGG.

Let us take, for instance, the sheriffs. The sheriffs are doing practically the same thing that the agents of the PCGG are performing. If we were to give immunity to the sheriffs, we can imagine the abuses that they would commit.

Let us take the policeman. He is also a public official. Can we imagine what would happen if he was given immunity from prosecution or from responsibility for being abusive in performing his duties?

Let us take the judges. I had been subjected to groundless accusations. The Supreme Court took care of them, but they made me more careful.

It is this responsibility which every official must answer; this sword of Damocles that will keep him always responsible and careful about the performance of his duties. And I strongly believe that if we remove this immunity which is granted by this executive order to the PCGG and its agents, we will have less abuse on the part of these agents.

Thank you.

MR. RAMA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): The Floor Leader is recognized.

MR. RAMA: The proponent of the main amendment, Commissioner Villacorta, would like to say a few words.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Villacorta may proceed.

MR. VILLACORTA: Mr. Presiding Officer, I disagree with Commissioner Aquino that the immunities and powers of the PCGG add to the cynicism of our people. On the contrary, the cynicism of our people will further be reenforced if this government is unable to punish the plunderers with the aid of an indifferent and overly legalistic Constitutional Commission.

This Constitutional Commission should give our people reason to be optimistic, particularly about the dictum that crime does not pay. Do we want to bring justice to the brazen pillage of our country? Do we want to recover the billions of dollars plundered by the dictator so that we can use these valuable amounts to help our nation back to its feet?

If so, why are we making it difficult for our government to bring justice to the culprits and to recover the wealth that has been grabbed from our people? Why are we so worried about the property rights of the dictator and his cronies?

We have seen how Mr. Marcos has made a mockery of the investigations. We just distributed a xerox of a news report headlined: "Mr. Marcos Scoffs at PCGG Investigators." Do we want to help him go scot-free? Why are we so apprehensive about the few abuses which are more the exceptions and which we know have been properly remedied by both the PCGG and the government themselves?

MR. RAMA: Mr. Presiding Officer, we are ready to vote now on this amendment to the amendment.

MR. PADILLA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Padilla is recognized.

MR. PADILLA: We just like to state that the immunity being discussed under the executive order is immunity from civil action or damages, not immunity from criminal acts.

MR. RAMA: The body is ready to vote, Mr. Presiding Officer, on the Bernas amendment.

THE PRESIDING OFFICER (Mr. Treñas): Will Commissioner Bernas please read his amendment, so that we can be enlightened?

FR. BERNAS: The amendment reads: "ALL IMMUNITIES GRANTED IN CONNECTION WITH THE POWER TO ISSUE SEQUESTRATION OR FREEZE ORDERS ARE HEREBY REPEALED."

VOTING

THE PRESIDING OFFICER (Mr. Treñas): As many as are in favor, please raise their hand. (Few Members raised their hand.)

As many as are against, please raise their hand. (Several Members raised their hand.)

The results show 11 votes in favor and 26 against; the amendment is lost.

MR. RAMA: Mr. Presiding Officer, I move that we take a vote on the first paragraph of the committee amendment.

MR. SUAREZ: May we read the first paragraph, Mr. Presiding Officer?

The first paragraph will read: "ANY AUTHORITY TO ISSUE SEQUESTRATION OR FREEZE ORDER IN RELATION TO THE RECOVERY OF ILL-GOTTEN WEALTH SHALL REMAIN TO BE OPERATIVE EIGHTEEN MONTHS AFTER THE RATIFICATION OF THIS CONSTITUTION; PROVIDED THAT CONGRESS, IN THE NATIONAL INTEREST, AS CERTIFIED BY THE PRESIDENT MAY EXTEND SAID PERIOD. SUCH ORDER SHALL BE ISSUED ONLY UPON A SHOWING OF A PRIMA FACIE CASE."

MS. AQUINO: Mr. Presiding Officer, just one query before we vote.

THE PRESIDING OFFICER (Mr. Treñas): Yes, Commissioner Aquino may proceed.

MS. AQUINO: What is the committee's intention in the words "ANY AUTHORITY"? Does it mean that after the PCGG is dismantled, the President, in the exercise of her executive powers, could create another agency with the same powers?

MR. SUAREZ: The plain intention of the committee in using this phrase "ANY AUTHORITY TO ISSUE" refers categorically to the authority of the PCGG to issue sequestration orders, Mr. Presiding Officer.

VOTING

THE PRESIDING OFFICER (Mr. Treñas): As many as are in favor, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (Few Members raised their hand.)

As many as are abstaining, please raise their hand. (One Member raised his hand.)

The results show 34 votes in favor, 4 against and 1 abstention; the proposed paragraph, as read, is hereby approved.

MR. OPLE: Mr. Presiding Officer.

MR. PADILLA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Ople is recognized.

MR. OPLE: With respect to the last sentence of the paragraph that has just been approved, "SUCH ORDER SHALL BE ISSUED ONLY UPON A SHOWING OF A PRIMA FACIE CASE," may I put on record that my coauthors for this amendment were Commissioners Florenz Regalado and Rustico de los Reyes, Jr.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Padilla is recognized.

MR. PADILLA: Mr. Presiding Officer, regarding the same section, in the next paragraph, on line 5, I move to change the word "six" to "TWO." This has reference to sequestration or freeze orders issued before the ratification of the Constitution. My proposed amendment was for the judicial action to be filed within six months after the issuance of the order. Under the Azcuna and Davide amendments, they distinguished between writs issued before and issued after the ratification of the Constitution. The PCGG was created under the Freedom Constitution, Proclamation No. 3, dated March 1986. It has been issuing sequestration or seizure orders after March. Assuming that there is an order issued, let us say September, and we are now in October, and the ratification of the Constitution will be on January 1987 so we have October, November, December, January and then, we give them two more months, February and March. That will be more than six months that apply with regard to writs issued after the ratification of the Constitution, because the latter portion as per my proposal was a period of six months from the issuance thereof. However, if we maintain the "six months" as presently worded, it would mean that some writs that were issued, let us say, April, May, June, July or August, will still have more than six months

after the ratification and that would mean, in some instances, more than one year, whereas, the intention of the creation of the PCGG even under the executive orders is not to stop the issuance of the sequestration or freeze orders but to be followed by a judicial action.

Therefore, I propose that to be more logical and consistent, the period of six months on line 5 of the second paragraph be reduced to two months.

MR. BENGZON: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Bengzon is recognized.

MR. BENGZON: May I recall for the Commission, Mr. Presiding Officer, that Commissioner Azcuna proposed "three months" although it was accepted by the committee; Commissioner Davide proposed "one month." The body did not vote on this but subsequently Commissioner Davide withdrew his proposal of "one month" and Commissioner Azcuna did not insist on his "three months" proposal. The body already voted on this particular sentence. So the whole situation and the whole incident is foreclosed, Mr. Presiding Officer. The body voted on "six months." What we are really going to vote on is the entire paragraph which contains all the previous amendments. We will now vote on the second paragraph as a whole.

So I believe, Mr. Presiding Officer, that the proposal of Commissioner Padilla is out of order.

MR. PADILLA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Padilla is recognized.

MR. PADILLA: The comments of Commissioner Bengzon do not dispute the facts that I have stated in support of my amendment. I do not recall — I never left the premises here — that we have voted on the same proposals and there were so many proposals that the sessions have been interrupted several times to give the proponents an opportunity to confer with the committee.

Therefore, to say that this has been foreclosed and to say that I am out of order, I think, is not correct.

MR. BENGZON: Mr. Presiding Officer, I am anchoring my argument on the fact that the body after so many deliberations on this matter has already voted for a six-month period. And, therefore, I believe that the whole issue with respect to this matter is foreclosed.

MR. PADILLA: I believe that the six-month period was my original proposal. I am referring to the "six months" after the issuance of the order. But thereafter they made a distinction between dates before or after ratification.

I submit that this proposal of mine be submitted to a clear vote, because there has never been any voting before.

SUSPENSION OF SESSION

THE PRESIDING OFFICER (Mr. Treñas): The session is suspended.

It was 4:16 p.m.

RESUMPTION OF SESSION

At 4:16 p.m., the session was resumed.

THE PRESIDING OFFICER (Mr. Treñas): The session is resumed.

MR. BENGZON: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Bengzon is recognized.

MR. BENGZON: In order to facilitate matters, Mr. Presiding Officer, I would withdraw my motion for "out of order," and then I suggest that we vote on the matter.

MR. DE CASTRO: For the record, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner de Castro is recognized.

MR. DE CASTRO: For the record, although Commissioner Bengzon has withdrawn his comments of "out of order" on Commissioner Padilla, I do not remember having voted on the number of months, on six months. So, Commissioner Padilla is in order right from the very beginning.

THE PRESIDING OFFICER (Mr. Treñas): At any rate, the motion of Commissioner Bengzon has already been withdrawn.

Mr. Floor Leader, may we know what the parliamentary situation is?

MR. RAMA: May I ask that Commissioner Padilla be allowed to restate his amendment to the amendment for a vote?

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Padilla is recognized.

MR. PADILLA: The second sentence of the reformulated provision reads: "THE ORDER AND THE LIST OF THE SEQUESTERED OR FROZEN PROPERTIES SHALL BE FORTHWITH REGISTERED WITH THE PROPER COURTS. FOR SEQUESTRATION OR FREEZE ORDERS ISSUED BEFORE THE RATIFICATION OF THIS CONSTITUTION, THE CORRESPONDING JUDICIAL ACTION OR PROCEEDINGS SHALL BE FILED WITHIN TWO MONTHS."

That is my amendment.

THE PRESIDING OFFICER (Mr. Treñas): Has Commissioner Padilla finished his amendment?

MR. PADILLA: Yes, just for the rewording of the provision.

MR. RODRIGO: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Rodrigo is recognized.

MR. RODRIGO: Before we vote, I would like to ask a few questions.

The Gentleman will preserve the third sentence which is: "Judicial action or proceedings shall be filed within six months," for orders issued after ratification.

MR. PADILLA: That is correct. I am not changing the third sentence.

MR. RODRIGO: Let us suppose that one month before the ratification of the Constitution, a sequestration or freeze order is issued. So, after the ratification of the Constitution, only two months would be allowed. So this will only be three months. On the other hand, a sequestration order issued after the ratification of the Constitution will have six months. Will this not discriminate against somebody to whom an order was filed and an order issued, let us say, one month or even two months, or maybe a week before the ratification of the Constitution? In which case, the PCGG will be allowed less than six months or even less than three months.

MR. PADILLA: This has reference not to the issuance of the sequestration or freeze order. This refers more and principally to the filing of the corresponding action, complaint or proceeding.

MR. RODRIGO: That is correct, Mr. Presiding Officer.

MR. PADILLA: There are many writs that have already been issued after March 1986. The Constitution will be ratified in January 1987, and if we give them another six months, then there will be instances where no action will be taken for one year or more. And that has always been the complaint, that there has been not a single action, so far, filed by the PCGG in the proper courts.

If we contemplate the situation where in January the Constitution will be ratified, hopefully, and the commission does not have sufficient evidence for a prima facie or a probable cause, then they should not issue the sequestration order during Christmas of 1986, because then they will only have only two months after January.

But the real problem is with regard to so many orders that have been issued after March 1986, and the constitution will only be ratified by January. And six months more is like encouraging inaction to the prejudice of some ongoing private businesses.

MR. RODRIGO: Thank you very much.

VOTING

THE PRESIDING OFFICER (Mr. Treñas): I think the matter has been sufficiently discussed. We will now vote on the amendment of Commissioner Padilla reducing the six-month period to two months within which the case shall be filed.

As many as are in favor, please raise their hand. (Few Members raised their hand.)

As many as are against, please raise their hand. (Several Members raised their hand.)

The results show 11 votes in favor and 24 against; the proposed amendment is lost.

MR. RAMA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): The Floor Leader is recognized.

MR. RAMA: I move that we now vote on the whole paragraph, the second paragraph of the same section.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Jamir is recognized.

MR. JAMIR: I have a slight amendment with respect to the second sentence of the second paragraph by deleting the word "the" between "from" and "ratification" and the rest of the sentence, so that, as amended, the sentence will read: "FOR SEQUESTRATION OR FREEZE ORDERS ISSUED BEFORE THE RATIFICATION OF THIS CONSTITUTION, THE CORRESPONDING JUDICIAL ACTION OR PROCEEDING SHALL BE FILED WITHIN SIX MONTHS FROM ITS RATIFICATION."

MR. SUAREZ: The committee accepts the amendment.

MR. JAMIR: Thank you.

THE PRESIDING OFFICER (Mr. Treñas): Is there any objection? (Silence) The Chair hears none; the proposed second paragraph, as amended, is hereby approved.

MR. SUAREZ: We put it to a vote.

MR. BENGZON: There was no objection after all.

FR. BERNAS: Mr. Presiding Officer, I thought the question "no objection" referred to the amendment proposed

by Commissioner Jamir.

VOTING

THE PRESIDING OFFICER (Mr. Treñas): As many as are in favor of the second paragraph, as amended by Commissioner Jamir, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (Few Members raised their hand.)

The results show 32 votes in favor and 3 against; the proposed section, as amended, is approved.

MR. MAAMBONG: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Maambong is recognized.

MR. MAAMBONG: Just one minor point for the record. Mr. Presiding Officer. We just want that the six months should be indicated in words, not in figures.

MR. RAMA: That is for the Committee on Style to do. There is a third paragraph, Mr. Presiding Officer. May I ask that we take a vote on the third paragraph?

THE PRESIDING OFFICER (Mr. Treñas): Will the committee read the third paragraph?

MR. SUAREZ: The third paragraph reads: "THE SEQUESTRATION ORDER SHALL BE AUTOMATICALLY LIFTED IF THE JUDICIAL FUNCTION OR PROCEEDING IS NOT FILED AS HEREIN PROVIDED, UNLESS PREVENTED BY EXTRAORDINARY CIRCUMSTANCES."

MR. DAVIDE: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Davide is recognized.

MR. DAVIDE: May I propose the following amendments: I seek to delete the words "SHALL BE" and in lieu thereof insert the words "IS DEEMED" on the first line. Then delete the word "THE" before "JUDICIAL" and substitute it with "NO" on the second line. Then delete the word "NOT" before "FILED," and completely delete the following on the third line: the comma (,) after "PROVIDED" and the words "UNLESS PREVENTED BY EXTRAORDINARY CIRCUMSTANCES." So that the entire third paragraph will read as follows: "THE SEQUESTRATION OR FREEZE ORDER IS DEEMED AUTOMATICALLY LIFTED IF NO JUDICIAL ACTION OR PROCEEDING IS FILED AS HEREIN PROVIDED."

MR. ROMULO: May I ask a question, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Romulo is recognized.

MR. ROMULO: Mr. Presiding Officer, under his proposed amendment, is it still correct to say that that is without prejudice to filing a new sequestration order in the event that a new evidence is discovered?

MR. DAVIDE: That is correct, Mr. Presiding Officer, a new order may be issued.

MR. SARMIENTO: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Sarmiento is recognized.

MR. SARMIENTO: May I just ask one question of the proponent? Is the Gentleman asking for the deletion of the words "UNLESS PREVENTED BY EXTRAORDINARY CIRCUMSTANCES"?

MR. DAVIDE: Yes, Mr. Presiding Officer.

MR. SARMIENTO: May we know the reason for the deletion of these words especially "EXTRAORDINARY CIRCUMSTANCES"?

MR. DAVIDE: I asked for their deletion because this will be the escape clause to justify noncompliance of the mandatory character of the filing. It will again be left to the Supreme Court to define what is "EXTRAORDINARY." We better delete it.

MR. SARMIENTO: In that event, Mr. Presiding Officer, I am supporting the Davide amendment.

MR. DAVIDE: Thank you, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Romulo is recognized.

MR. ROMULO: I would ask for the retention of the last clause because that was a compromise between the committee and Commissioner Regalado in arriving at this formulation.

THE PRESIDING OFFICER (Mr. Treñas): What does the committee say?

MR. SUAREZ: May we suggest that we leave the matter to the discretion of the body, Mr. Presiding Officer, as far as the two minor amendments are concerned.

MR. DAVIDE: Three minor amendments, Mr. Presiding Officer.

MR. SUAREZ: Yes. The last one is rather substantial but the first two are all right.

MR. DAVIDE: No, I refer to the substitution of "SHALL BE" to "IS DEEMED."

MR. SUAREZ: Yes, that is accepted.

MR. DAVIDE: Then the insertion of "NO" before "judicial" and deleting "THE."

MR. SUAREZ: That is also accepted.

MR. DAVIDE: And the deletion of "NOT" before "FILED."

MR. SUAREZ: That is also accepted.

MR. OPLE: Mr. Presiding Officer.

MR. RAMA: Mr. Presiding Officer.

MR. OPLE: Before we vote, may I seek some clarification from the proponent on what will constitute extraordinary circumstances? Does this refer to acts of God, for example?

MR. DAVIDE: That is exactly the reason, Mr. Presiding Officer, why I am seeking for its deletion because it is so vague, so general, that it could be the escape clause of the authority issuing the sequestration or freeze order to justify its failure to comply with the mandatory requirement that a court proceeding or action must be commenced within six months following the issuance of such an order.

MR. OPLE: Mr. Presiding Officer, I think we just voted for a six-month period during which the government may file the appropriate judicial action or proceeding and this is what the Commission voted for after setting aside suggestions of two months, one month or three months. Does the Gentleman not think that with this deadline of six months there is really no need to provide for exceptions by extraordinary circumstances?

MR. DAVIDE: I fully agree with the Commissioner, Mr. Presiding Officer, especially if that exception is so vague.

MR. OPLE: Thank you.

MR. GUINGONA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Guingona is recognized.

MR. GUINGONA: Commissioner Davide, in his manifestation, mentioned the fact that because of this provision, there would be a need to bring up the matter to the Supreme Court for interpretation or construction. I do not see anything wrong with the Supreme Court using its discretion in determining what might be and what could have been extraordinary circumstances. It would not be cautious of us to think that there would be some extraordinary circumstances that could just be filed. And this will be a matter that will not be determined by the PCGG. It would be a matter determined by the courts, particularly the Supreme Court, on which we repose our confidence.

MR. DAVIDE: Mr. Presiding Officer, that particular matter is only a collateral issue.

MR. REGALADO: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Regalado is recognized.

MR. REGALADO: As the proponent, in collaboration with Commissioner Colayco, of this last paragraph, our original formulation did not include the excepting clause now being objected to. However, we agreed with the committee for its inclusion thereof because the vagaries of the future, the changes of circumstances, might render some very justifiable situations why we cannot just be bound to the calendar since even the law recognizes the possibility of fortuitous events, force majeure, acts of God, acts of law, insuperable causes. But that does not mean to say that it will be a very convenient escape hatch, because the party adversely affected and who seeks the benefit of the six-month period to bar further action against the PCGG is not precluded at all from taking it up with the court. And the question as to what constitutes extraordinary circumstances is quickly a judicial matter which is not for us here to determine except to give a guideline insofar as this excepting or negating clause is concerned.

THE PRESIDING OFFICER (Mr. Treñas): Is there anybody else who desires to speak before we vote?

MR. RAMA: Commissioner Romulo would like to confer with Commissioner Regalado for a few minutes.

MR. SARMIENTO: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Sarmiento is recognized.

MR. SARMIENTO: May I take exception to the remarks made by Commissioner Regalado? He spoke of vagaries. So he is for the retention of the words "EXTRAORDINARY CIRCUMSTANCES." I agree with Commissioner Davide. I agree with his proposal that we delete these words. These words are vague, and the words "national security" can even be invoked as covered by extraordinary circumstances, national security and national emergency. These were the very same concepts and words used by the past regime to justify its continuation in power. And these could be the very same words that could be used by PCGG to justify its inaction or laziness.

MR. RAMA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): The Floor Leader is recognized.

MR. RAMA: I believe that the phrase "UNLESS PREVENTED BY EXTRAORDINARY CIRCUMSTANCES" is no longer necessary, in view of the fact that it was already agreed that the PCGG can refile a case, if it has some new evidences. And this is already an overkill in protecting the rights of the PCGG. So I suggest that we accept

the amendment to delete this phrase.

MR. ROMULO: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Romulo is recognized.

MR. ROMULO: On the many comments and in consultation with Commissioner Regalado who did not have that phrase to begin with and on the understanding that in any case the PCGG can always file a new sequestration or freeze order upon discovery of new evidence, we will accept the deletion.

MR. RAMA: So with that clarification, may I ask for a vote on this third and last paragraph.

THE PRESIDING OFFICER (Mr. Treñas): Before we vote, can we request Commissioner Davide to read the proposed paragraph, as amended?

MR. DAVIDE: As amended, it will now read as follows: "THE SEQUESTRATION OR FREEZE ORDER IS DEEMED AUTOMATICALLY LIFTED IF NO JUDICIAL ACTION OR PROCEEDING IS FILED AS HEREIN PROVIDED."

VOTING

THE PRESIDING OFFICER (Mr. Treñas): As many as are in favor of the amendment, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (A Member raised his hand.)

As many as are abstaining, please raise their hand. (Three Members raised their hand.)

The results show 34 votes in favor, 1 against and 3 abstentions; the proposed paragraph, as read, is approved.

MR. RAMA: Mr. Presiding Officer, I ask that we vote on the entire section since there are no more amendments to it.

THE PRESIDING OFFICER (Mr. Treñas): Will the Chairman read the entire section so that we can vote on it?

MR. SUAREZ: Yes, Mr. Presiding Officer. The entire section consists of three paragraphs and it will read: "ANY AUTHORITY TO ISSUE SEQUESTRATION OR FREEZE ORDER IN RELATION TO THE RECOVERY OF ILL-GOTTEN WEALTH SHALL REMAIN TO BE OPERATIVE NOT MORE THAN EIGHTEEN MONTHS AFTER THE RATIFICATION OF THIS CONSTITUTION; PROVIDED THAT CONGRESS, IN THE NATIONAL INTEREST, AS CERTIFIED BY THE PRESIDENT, MAY EXTEND SUCH PERIOD. SUCH ORDER SHALL BE ISSUED ONLY UPON SHOWING OF A PRIMA FACIE CASE.

"THE ORDER AND THE LIST OF THE SEQUESTERED OR FROZEN PROPERTIES SHALL BE FORTHWITH REGISTERED WITH THE PROPER COURTS. FOR SEQUESTRATION OR FREEZE ORDERS ISSUED BEFORE THE RATIFICATION OF THIS CONSTITUTION, THE CORRESPONDING JUDICIAL ACTION OR PROCEEDING SHALL BE FILED WITHIN SIX MONTHS FROM ITS RATIFICATION. FOR THOSE ISSUED AFTER SUCH RATIFICATION, THE JUDICIAL ACTION OR PROCEEDING SHALL BE FILED WITHIN SIX MONTHS FROM THE ISSUANCE THEREOF.

"THE SEQUESTRATION OR FREEZE ORDER IS DEEMED AUTOMATICALLY LIFTED IF NO JUDICIAL ACTION OR PROCEEDING IS FILED AS HEREIN PROVIDED."

VOTING

THE PRESIDING OFFICER (Mr. Treñas): As many as are in favor of this section, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (Few Members raised their hand.)

The results show 34 votes in favor and 4 against; the section, as read, is approved.

The Floor Leader is recognized.

MR. RAMA: I voted in favor. I was distracted by Commissioner Romulo, or probably he was against it. (Laughter)

THE PRESIDING OFFICER (Mr. Treñas): So the Commissioner voted?

MR. RAMA: Yes, I voted in favor of the provision.

THE PRESIDING OFFICER (Mr. Treñas): Was his vote counted?

MR. SUAREZ: It will be 35 instead of 34 votes, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): So there are 35 votes in favor.

MR. RAMA: Thank you, Mr. Presiding Officer.

We now proceed to take up Section 7, the controversial section. I ask that Commissioner Rustico de los Reyes be recognized for his sponsorship speech.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner de los Reyes is hereby recognized.

MR. TINGSON: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Tingson is recognized.

MR. TINGSON: I am a member of this committee and I would like to be clarified because the Floor Leader asked Commissioner de los Reyes to make a sponsorship speech.

MR. RAMA: I stand corrected, Mr. Presiding Officer. The Committee may wish to say something about that committee amendment. Commissioner Rustico de los Reyes is the first registered speaker.

THE PRESIDING OFFICER (Mr. Treñas): So we recognize the Chairman of the Committee.

MR. SUAREZ: Mr. Presiding Officer, before we hear the speech of the Honorable de los Reyes, may we state on record this Section 7 as originally proposed by the committee. I will just go over the record.

Section 7 as proposed reads:

The incumbent President and Vice-President shall hold office for a term of six years starting at noon of February 25, 1986 until noon of February 25, 1992.

This is subject, however, to the matter of synchronization of elections as suggested and proposed by the Committee on the Legislative, considering that as proposed by the Legislative Committee, chaired by the Honorable Davide, the taking of oath of office for the Members of Congress of the Philippines, both the Senate and the House of Representatives, will take place on June 30, 1987. And it is also proposed by the Committee on the Legislative that for purposes of synchronization of elections the cutoff period, as the case may be, should be June 30, 1992. By virtue of that proposal, the committee amendment or proposal that the terms of the incumbent

President and Vice-President would end on February 25, 1992 may have to be synchronized with that date. That is to say, instead of the term being terminated until noon of February 25, 1992, it may have to be extended to read: "until noon of June 30, 1992." That is the-only observation volunteered by the Committee on Transitory Provisions for the appreciation of the Members of the Commission in relation to this Section 7, Mr. Presiding Officer.

MR. TINGSON: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Tingson is recognized.

MR. TINGSON: It seems to me that the sponsorship speeches should really be in support of Section 7. And I know Commissioner de los Reyes is proposing something that is drastically different, by way of an amendment to Section 7. I think the chairman himself or the members of the committee who are prepared to speak in defense of Section 7 should first make the sponsorship speech before major amendments would be entertained.

THE PRESIDING OFFICER (Mr. Treñas): The Chair recognizes Commissioner de los Reyes upon recommendation of the Floor Leader.

What does the Floor Leader say to the comments of Commissioner Tingson?

MR. RAMA: We are really in the period of interpellations which would be followed immediately by the period of amendments. And for purposes of balance, I wanted to set up a rule whereby the first speaker will be pro and the second will be con so that we have a better understanding of what the issues are.

MR. SUAREZ: In other words, it should be alternate.

THE PRESIDING OFFICER (Mr. Treñas): So whom shall the Chair recognize first?

MR. RAMA: I ask that we recognize first Commissioner Tingson who is in favor of the committee amendment.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Tingson is recognized.

MR. TINGSON: I would, however, give way to Commissioner de los Reyes, Mr. Presiding Officer, if he still insists on speaking first.

MR. DE LOS REYES: If I will be next to Commissioner Tingson, I will be satisfied.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Tingson will please proceed.

MR. TINGSON: Thank you, Mr. Presiding Officer.

That Cory Aquino is the duly elected President of the Republic of the Philippines should put to rest the debates on whether or not she should submit to a presidential election, together with all other national and local elections after the ratification of the 1986 Constitution.

Before the Batasang Pambansa was abolished, following the adoption of the Freedom Constitution, there was a demand from Members of the Batasang Pambansa, many of whom were KBL and Marcos supporters, to declare Cory Aquino winner in the snap election, in spite of the fact that the Marcos-controlled legislative body had already proclaimed Mr. Marcos, thanks to the most fraudulent election yet in living memory. If President Aquino had submitted to the wily scheme of the KBL members of the Batasan to give legitimacy to the election of Cory Aquino, there would have been no more debates now on the tenure of her office. If the victory of Cory Aquino was not legitimate, they would legitimize it by mere proclamation. If it was a legitimate victory, which it really was, why then should it still be legitimized? Either way the proponents were wrong. What was the significance of the revolution? Did it install Cory Aquino to power? Mr. Presiding Officer, the answer is "yes," it did.

The revolution was the only way by which she could assume office, for Mr. Marcos was determined to hold on to power rightly or wrongly. There is no doubt that Cory won the February 7 election, only she was not allowed by the COMELEC to be declared winner. The revolution at EDSA did it. We are just confirming the term of office of the President and Vice-President, according to the 1973 Constitution, which was the basis of the snap presidential election, and the Transitory Provisions of the new Constitution. To let President Aquino submit to another presidential election would not only be illegal but destructive, illogical and unrealistic. It is the greatest destabilizing factor which could throw our country to political chaos, tragedy and perdition.

The people were right, Mr. Presiding Officer, in electing President Aquino. She has proved to the whole world that she can lead this country towards true democracy, peace, justice and prosperity. All of us were proud, like no Filipino had ever been before, when we saw our charming, eloquent, knowledgeable President being hailed by the members of the joint Congress when she spoke in Washington D.C. recently, and several of them said: "Never before has a better speech been delivered before us in the history of this body." It was Cory Aquino who said, quoting her late husband:

I will never be able to forgive myself, if I will have to live with the knowledge that I could have done something and I did not do anything.

We are all glad that she did something about it.

Mr. Presiding Officer, let us rally behind her. Let us not embarrass the President by subjecting her to another election, for indeed she is already an elected leader of our country. Let us give her an opportunity to implement the provisions of the new Constitution which we have the privilege and the honor to write. And within six years, we the Filipino people unanimously supporting and praying for her will yet see the most glorious chapter of our Philippine history. Therefore, I support our committee report, Mr. Presiding Officer.

MR. RAMA: I ask that Commissioner de los Reyes be recognized.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner de los Reyes is recognized.

MR. DE LOS REYES: Mr. Presiding Officer, my proposal will read: "SECTION 7. THE INCUMBENT PRESIDENT AND VICE-PRESIDENT SHALL HOLD OFFICE FOR A TERM OF SIX YEARS STARTING AT NOON OF FEBRUARY 25, 1986 UNTIL NOON OF FEBRUARY 25, 1992 . . ." "UNTIL NOON OF FEBRUARY 25, 1992" can still be changed to "UNTIL NOON OF JUNE 30, 1992." Then we continue: "UNLESS A MAJORITY OF THE AFFIRMATIVE VOTES CAST IN THE PLEBISCITE IS FOR THE HOLDING OF AN ELECTION FOR PRESIDENT AND VICE-PRESIDENT SIMULTANEOUSLY WITH MEMBERS OF CONGRESS AFTER THE RATIFICATION OF THIS CONSTITUTION. SAID ISSUE SHALL BE SUBMITTED AS A SEPARATE QUESTION DURING THE RATIFICATION OF THIS CONSTITUTION. IN CASE AN ELECTION FOR SAID POSITIONS IS HELD ON THE AFOREMENTIONED DATES, THE TERM OF OFFICE OF THE NEWLY ELECTED PRESIDENT AND VICE-PRESIDENT SHALL COMMENCE AT NOON ON JUNE 30, 1987 AND SHALL EXPIRE AT NOON ON JUNE 30, 1992."

Mr. Presiding Officer, all of us knew beforehand that when we reach this particular section, the term of office of the incumbent President and Vice-President, there would be animated and lively debate on the issue. I hope my distinguished colleagues will not begrudge my proposal, which I assure them is not motivated by any partisan consideration. Like all freedom-loving Filipinos, we who were appointed as representatives of the responsible opposition would like to see President Aquino succeed. The crisis that beset our country transcends narrow political interest. After observing the actuations of my colleagues in this Commission and listening to their intellectual arguments, I could not help but feel that our country is struggling to be born again, eager to assert genuine sovereignty, eliminate injustices, unshackle itself from foreign domination and write a constitution that

will be liberating and egalitarian in impact. But over and above all these is a clear collective desire to come up with a fundamental law that is generative of national unity, a constitution that will heal open wounds and convert bitterness into healthy electoral competition. From the point of view of political science, a revolutionary government is usually manned by people supported by might or power to enforce its will and desires, so unlike constitutionally and legally elected officials whose official acts are drawn from the mandate of the people through elections. There is no doubt that even the incumbent leadership subscribes to this concept and considers this government as revolutionary.

Proclamation No. 3 states, among others:

The present government was installed through a direct exercise of the power of the Filipino people assisted by units of the new Armed Forces of the Philippines in defiance of the provisions of the 1973 Constitution.

This clearly means that the incumbent President and Vice-President have abandoned their claims of victory in the election of February 7, 1986. In repudiating or defying the 1973 Constitution under which the 1986 snap presidential election was held, they had, in effect, stated that they derived their mandate to govern from the February 25 EDSA revolution and not from the February 7, 1986 election. Therefore, their mandate is coterminous with the revolutionary government and should end also upon the termination of that revolutionary government. This takes effect upon the ratification of the new Constitution. Consequently, the incumbent President and Vice-President, if they wish to continue in office legitimately beyond the revolutionary period, must seek a new mandate from the people under the new Constitution.

I am not even advocating that they do this. My proposal is simply that we throw the issue directly to the people and let them decide, trusting in their innate intelligence and wisdom to chart their destiny with courage and patriotism. Can anything be more democratic than that? Surely, there must be a mechanism to finally settle the issue on who really won the presidential and vice-presidential election on February 7, 1986 in order to put an end to all those loose and irresponsible talks about the return of President Marcos to the country and the so-called coup d'etat. In this way we could reconcile our people, which to me is much more important than anything else. I realize, of course, that a referendum such as what I have proposed does not have the advantages of an election where the presidential candidates spell out their platforms of government and thus give the electorate the opportunity to hear, observe, evaluate and finally choose their candidates. I submit, however, Mr. Presiding Officer, that the proposal strikes a reasonable and acceptable balance to the pros and cons of the issue before us. In this way, we separate the merits of the draft constitutional proposals from the purely political question of the terms of office of the incumbent President and Vice-President.

I submit that an overwhelming vote for extension of office of the incumbent would send the incontrovertible message to all sectors of our society, to all political groups and to the community of nations that it would be inadvisable or even futile to question the legitimacy of the Aquino government. On the other hand, the people's vote to require them to submit themselves to an election under the new Constitution would not, in the least, constitute an affront to their persons or to the so-called "people's power" and the military which supports them or vice versa, the coup d'etat supported by the people, whichever way we want to look at it. But rather this would be an expression of the people's desire to exercise their fundamental right in a democracy and to vote for the candidates of their choice in a truly clean and fair election. Thus, would be wiped out hopefully the bitterness, the doubts and the confusions of the last snap elections. Whichever way our people vote in the proposed referendum, nothing but good will result from the exercise. This could be the starting point to real stability reconciliation and cooperation.

There are claims that the snap presidential election was attended with massive fraud, intimidation of voters, disenfranchisement and other electoral irregularities. Granting this to be so, Mr. Presiding Officer, what better

time and opportunity to confirm all these than through a presidential and vice-presidential election under this Constitution or, at the very least, through a referendum which I now propose.

The issue of whether or not to approve the new Constitution should be treated as separate and distinct from the issue of whether to grant the incumbents a mandate to govern up to 1992. The approval of the new Constitution is nonpolitical and nonpartisan, while the issue of continuance in office of the incumbents is highly emotional, partisan and political. I can say, without fear of contradiction from any of my colleagues, that the new Constitution for which we have labored and sacrificed is a good constitution, "pro-God, pro-country, pro-people and pro-poor," to use the words of our learned President, Cecilia Muñoz Palma. Truly, this charter is a product of our labor of love, starting from the Preamble.

A large majority of the people may want to vote, to ratify this Constitution, but they may prefer to be consulted separately on whether or not to grant a fresh mandate to the incumbents or conversely, there may be people who are against this new Constitution but would like the incumbents to continue in office up to 1992. It would be a pity, a waste of labor, time, effort and government funds if this new Constitution shall not be ratified because of a rider, sneaked into the Transitory Provisions, gratuitously granting a fixed term to the incumbent President and Vice-President. This will aggravate when an appointive commission does it. Unless we separate the two issues, there will always be that nagging doubt — whether the people really voted for the grant of a new mandate because of the mixture and confusion of the issues. This will even place President Aquino in the embarrassing position of having to endorse the Constitution which could be interpreted as self-serving since it will legitimize or constitutionalize her incumbency. Why not save her from that embarrassing and difficult situation? Anything that will give reason for the people to suspect rightly or wrongly that the Constitutional Commission was used as an instrument to perpetuate the incumbents in power up to 1992 even without consulting the people, will adversely affect the credibility of this Commission and the stability of this government. It will also continue to haunt and burden its existence and legitimacy.

This Commission has debated extensively on several important matters. And yet the right of the people to vote for their President and Vice-President under a new Constitution is being denied by us to them by taking it upon ourselves, 48 originally now 47 appointive Commissioners, to fix their terms of office. How will posterity judge us by such inexcusable denial of opportunity to our 55 million countrymen to have a say on their future? We have provided elections for legislative and local officials under the new Constitution and yet we refuse to give the people a chance to state whether they would also like a presidential and vice-presidential election under the new Constitution.

As I stated earlier, the President and Vice-President cannot be considered elected under the 1973 Constitution because this was repudiated by President Aquino herself in Proclamation No. 3. If we reject this proposal that we at least ask the people what they want, we will, in effect, be placing the President and Vice-President above this Constitution for which we have labored so hard. As I see it, even if we grant hypothetically that President Aquino and Vice-President Laurel were elected without a cloud of doubt or dispute attached to that election, they are still under moral obligation to run for election for their respective posts under the new Constitution to give it the dignity and respect that it deserves. If no less than the highest leadership exercises power under it after a fair and clean election, a precedent of honor and respect for the new Constitution would have been set. The moral persuasion for the President and Vice-President to run for election under the new Constitution becomes even more compelling because President Aquino, as I stated earlier, has chosen to govern under a revolutionary concept of government. This makes her exercise of power of government *de facto*, with all due respect to our Supreme Court's decisions *obiter dictum*.

In *Thorington v. Smith*, 8 Wallas, 8, 9, 19, Lawyer's Edition, page 361, it says, and I quote:

Such a government might be more aptly denominated a "government of paramount force," being maintained by active military power against the rightful authority of an established and lawful government and obeyed in civil matters by private citizens. They are usually administered directly by military authority but they may be administered also by civil authorities supported more or less by military force.

In quoting the foregoing concept of government, it is not my intention to debate whether or not the military forces of our country are the source of power of President Aquino. I made the reference for the sole purpose of emphasizing the irrefutable fact that we are presently operating or functioning under a revolutionary transitional government. The stability of our country demands that every vestige of this revolutionary transitional government be overcome by a constitutional and permanent government which can come about only if we ask the people whether they want the President and Vice-President to run for election under the new Constitution or to hold actually a presidential and vice-presidential election after the ratification of the Constitution.

After all, Mr. Presiding Officer, has not President Aquino been saying all along that her government is one of consultation and not dictation? By all means, let us give her a chance to translate her words into deeds. Let us consult the people on this matter. Even on the basis of the NAMFREL findings of 70 percent of the total voters turnout — this is NAMFREL's findings: the deposed President supposedly got 7,053,068 as against President Aquino's 7,835,070 or a majority of 782,002 votes in favor of President Aquino certainly, more than 7 million people who voted for President Marcos and who voted against President Aquino deserve to be consulted on this matter. Of course, it may turn out that the votes for the ratification of the new Constitution will be higher than the votes granting fresh mandate to the incumbents. That is to be expected, Mr. Presiding Officer, considering that one issue is nonpolitical and nonpartisan, while the other is highly partisan as I had stated earlier. Or it could be the other way around, considering the tremendous popularity and strong political base that President Aquino is now enjoying. Either way, the present government would be able to feel with some amount of accuracy the true pulse of the Filipino people, instead of being misled by the intoxicating applause of the crowd and reports by some of her close advisers which could be one-sided and inaccurate.

To those of you who love and support President Aquino and want her to succeed, I can only hope and pray that you do not commit the same mistake that the supporters and advisers of the deposed President committed by being so overly protective — some call it overkill — of the President and, in the process, alienating her from the people especially the *masang Pilipino*.

The deposed President had been accused of having used the 1971 Constitutional Convention to perpetuate himself in power through the Transitory Provisions of the 1973 Constitution. And for this, he was later punished by the people.

Will you allow a repetition of the same scenario with your President, when as Members of this Commission recognized for your probity, independence of mind, patriotism and nationalism, you have it in your power to avert the same mistake?

Noong 1971, inihalal kami at bumoto sa Transitory Provisions. Ano ang itinawag sa amin? "Mga Tuta ni Marcos." E, itong appointive pa, ano ang itatawag sa atin? Kayo na ang bahalang magpasiya.

So much has been said about the decision of the Supreme Court in the case of *Lawyers League for a Better Philippines vs. President Aquino*, GR Nos. 73748, 73972 and 73990, May 22, 1986. But if we examine very carefully the decision of the Supreme Court, we will precisely see that the statement of the Supreme Court that the present government is *de jure* is actually an *obiter dictum* because according to the Supreme Court, the legitimacy of the government is a political question for the people to decide. And inasmuch as President Aquino is now in effective control of the entire country, then it is or it must be a *de jure* government. But the Supreme Court never

touched on the term of office because it knew that upon the ratification of this new Constitution, the revolutionary government of President Aquino, although considered de jure during the revolutionary period, ceases. Any product of a successful direct state action which is a political act would entitle a government to claim a de jure status, because in the words of Dean Vicente Sinco, and I quote:

It is only by a narrow definition that a government brought about by the direct act of the people could be considered de facto or de jure. (Sinco, Phil. Political Law, 11th Ed., 1962, quoting Commonwealth v. Collins, 8 Watts, pp. 331, 349.)

Of course, our Supreme Court has no choice but to declare the Cory government de jure, otherwise the Supreme Court would be questioning its own legal existence, as well as the validity of the appointment granted to its members by President Aquino.

In the case of *Luther v. Borden*, 7 How. 1 (1849), it states:

Thus, whether the change is due to a new constitution or to a revolution, the change does not admit of judicial review.

The question is political. If a court decides at all, it must necessarily affirm the existence and authority of the government under which it is exercising judicial power.

Mr. Presiding Officer and my dear colleagues, for the last several weeks, we have worked long and hard to make a constitution for our beloved country that will stand the test of time, a constitution that we hope will be remembered with approval and gratitude by posterity.

During our labors, we have agreed, disagreed and striven to strike a happy balance to our disagreements. And underneath all these is a common denominator, the intellectual honesty and emotional sincerity of all. Let me repeat this: all the Commissioners of the Constitutional Commission of 1986, I will now appeal to all of you, nay, beg of you for the good of our country, most especially for the unity of our people and their over-whelming support to our draft Constitution, to approve this proposal, which some of your colleagues and I are now espousing. Pagbigyan naman ninyo kaming makapagkampa sa pag-aapropa ng Konstitusiyon na ito, nang hindi kami tutuligsain ng dati naming mga kasama na kami po ay "balimbing." (Laughter)

We want to participate in the approval of this Constitution but if we do not separate this question, it will be very difficult for us to do so. But in whatever way you vote on this provision, I shall have no doubt that you voted in accordance with your conscience and best judgment.

Thank you, Mr. Presiding Officer.

MR. NOLLEDO: Mr. Presiding Officer, will the Gentleman yield to a few questions?

MR. DE LOS REYES: Yes, Mr. Presiding Officer, willingly.

MR. NOLLEDO: The Commissioner stated that by setting up a revolutionary government, Corazon Aquino and Doy Laurel waived their right under the 1973 Constitution. What does the Commissioner mean by this?

MR. DE LOS REYES: In effect, the claim that they were cheated in the election was only a cause. What they did was to install a revolutionary government, instead of not dissolving the Batasan and having themselves proclaimed by the Batasan or filing an electoral protest before the Electoral Presidential Tribunal.

MR. NOLLEDO: The Commissioner must remember that there is a distinction between being elected to public office and the manner of the election. It seems to me that when he used the word "abandon," he is referring to a claim under the 1973 Constitution, meaning, to the manner of the election.

Actually, when you abandon something like a public position, you must refer to the principal thing which is the public position. There would be no abandonment in this case because Corazon Aquino and Doy Laurel actually assumed the presidency and the vice-presidency.

MR. DE LOS REYES: I think the Commissioner is indulging in hairsplitting technicalities; it all amounts to the same thing, Mr. Presiding Officer.

MR. NOLLEDO: I do not think so, because they are now in effective control of the government. So we do not talk of abandonment here because, in fact, they claimed their positions.

Would the Commissioner agree with me that when Corazon Aquino and Doy Laurel — assuming that they were really elected and I know they were really elected because they were not able to assume office immediately because of the deceptions and frauds committed during the election, and I think everyone can take judicial notice of that — were elected, the 1973 Constitution was still existing?

MR. DE LOS REYES: Correct.

MR. NOLLEDO: And, therefore, they were elected on February 7, 1986 when the 1973 Constitution was still existing.

MR. DE LOS REYES: But they were not proclaimed. It was President Marcos and Mr. Tolentino who were proclaimed. That was the result.

MR. NOLLEDO: Mr. Presiding Officer, because interpellations will be allowed later, I will ask the Commissioner a very important question because he is making a parallelism between the situation of Mr. Marcos who used the 1973 Constitution in order to perpetuate himself in power and the situation now where President Aquino is allegedly using the 1973 Constitution or the Freedom Constitution to continue in office.

I think there is a fundamental difference, if the Commissioner agrees with me, because in the case of Mr. Marcos his term was about to expire. He knew he would not be elected by the people because of the people's disenchantment with his government. But in the case of President Aquino, she was duly elected in the February 7, 1986 election. So I do not think there is any parallelism between the two.

MR. DE LOS REYES: The Commissioner might rationalize it that way, but in the eyes of the ordinary people it all amounts to the same thing.

MR. NOLLEDO: I think this can be explained to the people.

I thank the Commissioner, Mr. Presiding Officer.

MR. DE LOS REYES: The Commissioner is welcome.

MR. NOLLEDO: I was asked by the Floor Leader to terminate my interpellation. I have several questions more. So, in deference to the request of the Floor Leader, I will terminate my interpellation.

Thank you, Mr. Presiding Officer.

MR. CALDERON: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): The Assistant Floor Leader is recognized.

MR. CALDERON: I ask that Commissioner Rigos be recognized.

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Rigos is recognized.

REV. RIGOS: Mr. Presiding Officer, I rise to support Section 7, which fixes the term of the incumbent President and Vice-President to six years, starting at noon of February 25, 1986 and subject to synchronization of elections in 1992. The following are my reasons:

1) Mrs. Cory Aquino and Mr. Doy Laurel are the real winners in the February 7, 1986 presidential and vice-presidential elections. It is true that they were not the ones proclaimed by the Batasang Pambansa but the people repudiated such proclamation during the February 22-25 peaceful revolution. In fact, the people's perception that Mr. Marcos cheated in the last election provided the moral justification for the February revolution. The people, after so many years of the Marcos regime, would no longer tolerate massive cheating and fraudulence that often made mockery of the electoral processes. The integrity of the NAMFREL, the sterling courage of the computer technicians who walked out of the computer rooms and the repentant attitude of the defense establishments, particularly Minister Enrile who announced during the revolution that the real winners were Cory and Doy, effectively repudiated the Batasan proclamation of Marcos and Tolentino.

2) The election of Cory Aquino and Doy Laurel had been gloriously blessed by the people in every nook and corner of the land. Wherever they go, whether it be to Jolo, the Cordilleras, Cebu, Cagayan de Oro, Baguio or the University of the Philippines in Quezon City, the people's welcome has continued to be warm and joyous reflecting their strong support to the legitimacy of their leadership. Senator Arturo Tolentino, Rafael Recto and a few others who have direct access to mass media and the Filipino masses do not tire of telling the people that Cory and Doy are illegal usurpers of political power; that he, Mr. Tolentino, is the legitimate Acting President of the Republic while the legitimate President is taking his vacation in Honolulu.

Indeed, one pleasant Sunday afternoon sometime last July, while so many people were promenading at the Luneta, Mr. Tolentino proclaimed himself at the Manila Hotel as the Acting President and took his oath of office before a retired Justice of the Supreme Court after which he solemnly appointed Mr. Juan Ponce Enrile as the Minister of National Defense. That Minister Enrile declined the appointment was not the tragedy of that historical event. The real tragedy was that the whole thing became a comical show for the entertainment of the entire nation. When the people repudiated the Tolentino oath-taking, they, in effect, sustained the authenticity of the Cory/Doy victory in the February 7 presidential election.

3) Practically, all nations in the world have clearly expressed their recognition of the Aquino-Laurel government. The President's recent visit to the United States was not only a personal triumphant experience for her. It also provided the opportunity for the United States and the United Nations to express their confidence in the legitimacy of Mrs. Aquino's leadership in the Philippines.

4) The setting aside of the 1973 Constitution by the Aquino government does not, in any way, negate the true results of the February presidential election. After all, as former Chief Justice Roberto Concepcion affirms, the 1973 Constitution was never formally ratified by the people. In fact, after several amendments, it became to be known as the Marcos Constitution. Furthermore, the proclamation of the Freedom Constitution and the establishment of the revolutionary government did not erase the results of the February election. In other words, as far as our people are concerned, Cory and Doy were elected for a term of six years.

5) When Cory and Doy ran for President and Vice-President, they definitely had in mind a six-year term. Their coming to power through the direct exercise of the power of the Filipino people was not of their own making. It was the people's way of overriding the Batasan proclamation of Marcos and Tolentino. The emergence of the revolutionary government, therefore, was simply the logical consequence of people power made necessary by the conspiracy of events. Happily for all of us, right from the very beginning, the leaders of the revolutionary government have made it crystal clear that the said government, though revolutionary in origin, is nevertheless

democratic in essence and transitional in character. When the leaders said that the government is transitional in character, they were referring to the life of the revolutionary government and not to the term of Cory and Doy. Both the President and the Vice-President, and for that matter all concerned Filipinos, want to restore constitutional democracy. That is why we are here in this Constitutional Commission. It is not the intention of either Cory or Doy, who were elected only eight months ago, to shorten their term of six years. In fact, both in New York and immediately after her U.S. trip, President Aquino announced publicly that she does not seek reelection after her term of six years. Hence, Proclamation No. 3, which mandates "national elections" as may be provided by the new Constitution, does not contemplate any presidential election before 1992. Therefore, the national elections mentioned in Proclamation No. 3 necessarily refer to the elections of Members of Congress.

I am glad that Commissioner Maambong, in his position paper distributed to us a few days ago, has already assured us that this Constitutional Commission can give the President and the Vice-President a fixed term of office. We salute him for confirming this inherent power of this Commission. But Commissioner Maambong humbly submits that we should not, because he feels it is legally doubtful. I submit that we should, precisely because it will merely confirm their six-year term. If we were to give the President and the Vice-President a term of eight years instead of six, that will be immoral and illegal. But if they are given what is due them, which is six years, we should never doubt ourselves.

The only favor we are asking the people in this transitory provision is to allow Cory and Doy to stay until June 30, 1992 instead of February 25, 1992, for the sake of synchronization of elections.

I am very positive that the people will grant them that short extra time.

Thank you, Mr. Presiding Officer.

MR. CALDERON: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas): The Assistant Floor Leader is recognized.

MR. CALDERON: I ask that Commissioner Maambong be recognized.

THE PRESIDING OFFICER (Mr. Treñas): Before the Commissioner proceeds, I would like to make it of record that I am turning over the Chair to Commissioner Tingson.

At this juncture, the Presiding Officer relinquished the Chair to the Honorable Gregorio J. Tingson.

THE PRESIDING OFFICER (Mr. Tingson): Commissioner Maambong will now please proceed.

MR. MAAMBONG: Mr. Presiding Officer, I rise against the proposal to give a six-year term of office to the incumbent President and Vice-President without the benefit of an election or referendum. I am in favor of calling for national elections for the position of President and Vice-President after the ratification of the Constitution we are framing, in substitution of the committee formulation that this Commission should fix the term of the President and the Vice-President to six years from February 25, 1986, as indicated in Section 7 of the committee report.

Mr. Presiding Officer, I would have wanted very much to present my arguments in detail; unfortunately, however, time is not elastic and I do not wish to burden the Commission, especially after that more than five-hours discussion on the section on private armies, armed groups and paramilitary forces which has drained the energies of the committee and the Members of the Commission.

I will, therefore, summarize my submission as briefly as I can, and I beg the indulgence of the Chair to allow me ample time for extension to finish what I have to say should I exceed my time limit. Before I do so, may I request

that I be allowed to insert in the record, in consonance with parliamentary practice, the position paper adverted to by Commissioner Rigos, which I had prepared so that I can merely refer to its contents in the process of my speech.

Do I have the permission of the Chair, Mr. Presiding Officer?

THE PRESIDING OFFICER (Mr. Tingson): The permission is granted.

MR. MAAMBONG: Thank you.

Let me argue the case, if I may call it that, as a lawyer should. The issue on the matter at hand has been joined. The first pleading was filed when Commissioner Ople, Natividad and this Representation presented before the Commission Proposed Resolution No. 458. For the record, it reads:

SECTION _____. The term of the incumbent President and Vice-President shall be deemed to have begun February 25, 1986 and shall end after their successors shall have been elected and proclaimed in an election which shall take place within ninety (90) days from the ratification of this Constitution.

That, in essence, is the tenor of our Resolution No. 458. This was not accepted by the committee and instead the present Section 7 is now incorporated in Committee Report No. 38, which reads:

The incumbent President and Vice-President shall hold office for a term of six years starting at noon of February 25, 1986 until noon of February 25, 1992, subject to synchronization of elections.

As a member of the committee, I did not press this issue so much in the committee level in order not to delay the proceedings, knowing fully well the sentiments of the members of the committee. Foremost in my mind, however, was the fact that this issue is of transcendental importance and ultimately it will be brought forward and subjected to a full-blown debate before the Constitutional Commission and the Members thereof, the final arbiter on this matter.

I have been given my day, Mr. Presiding Officer, although to a limited extent, to ventilate this issue during the public consultations to which I have been kindly assigned by the Commission in Cebu City, Dumaguete City, Ozamis City and other areas of the country, at times terribly alone and in other occasions in the happy company of my colleagues in the Commission. I would like to mention that in the recent 9th UP Alumni Association Institute gathering at Cagayan de Oro City, to which I have been generously assigned as panelist by our President, together with Commissioners Nieva, Quesada, Foz and Davide, this issue was a major point of discussion during the open forum on the theme, "Constitution-Making and Ratification: Challenges to the UP Alumni."

I have, likewise, brought forward this issue in news interviews, speaking engagements and talk shows, the last of which was with our own Vice-President Padilla and Senator Tolentino, with Hilarion Henares, Jr. as our host. Not satisfied with my oral arguments before the bar of public opinion and in fairness to the Filipino people and my country whom I perceive to be my clients, I filed my last pleading in this regard, a memorandum, so to speak, entitled: "The Term of Office of the Incumbent President and Vice-President." Each one of the Members has been furnished a copy. Through the auspices of our Ad Hoc Committee on Media, more specifically through the Honorable Vicente Foz, my position paper found print in the Manila Bulletin issue of October 2, now appropriately entitled: "New Presidential, Vice-Presidential Elections for Political Stability." I am very grateful to the Honorable Foz for changing the title because political stability is the theme of my article. In fact, it is what this exercise of constitution-making is all about.

Proclamation No. 3, otherwise known as the Freedom Constitution, states that this is a revolutionary, transitional government and so does Justice Minister Neptali A. Gonzales. There is no other way by which we can transit from a revolutionary government to a constitutional democracy than by elections. That is why the Freedom

Constitution prescribes for the drafting, adoption and ratification of a new constitution and the holding of national and local elections. It does not provide for an exception in the positions of President and Vice-President. Neither has President Aquino. As a matter of fact, in her speech before the joint session of the U.S. Congress last September 18, she said in part, and I would like to quote:

A zealously independent Constitutional Commission is completing its draft which will be submitted later this year to a popular referendum. When it is approved, there will be local and national elections. So within about a year from a peaceful but national upheaval that overturned a dictatorship, we shall have returned to full constitutional government.

Mr. Presiding Officer, I am not alone in this interpretation. Kindly listen to what Vice-President Laurel, some Cabinet Ministers and one opposition leader said. I will now quote what Vice-President Laurel said in the Philippine Daily Express issue of September 22:

Vice-President Salvador H. Laurel yesterday indicated that President Aquino had agreed to hold local elections within sixty days after the plebiscite even if the draft Constitution is not ratified. Laurel also said that he and President Aquino are willing to submit themselves to another presidential elections if that is what the people want.

"If the Constitution says President Aquino and I should submit ourselves to another election and the people ratified it, then we would have to abide by the will of the people," Laurel said. He also said that the President agreed that the early holding of local elections is the best means of defusing the current instability in local governments brought about by the appointment of unpopular officers-in-charge by Local Government Minister Aquilino Pimentel. "If local elections had been held as scheduled last May, we could have avoided all of the controversies that resulted from the appointment of these OICs. The will of the people can never replace the will of one man," Laurel said.

Also, we have Natural Resources Minister Ernesto Maceda who was quoted as saying in the issue of the papers of September 19:

Natural Resources Minister Ernesto Maceda said that President Aquino and Vice-President Laurel should submit themselves to new election to settle once and for all the claim of the so-called Marcos loyalists that they do not enjoy popular support, citing the outcome of the recent survey which showed that Mrs. Aquino's popularity rating has gone up to 82% which means that only 18% of the voters won't vote for Cory, if new elections were held now because of her undoubted sincerity and concluding that Mrs. Aquino and Mr. Laurel can beat any presidential ticket in an election.

Then we have the statement of Defense Minister Juan Ponce Enrile which was quoted in Philippine Daily Inquirer issue of September 23 under the banner headline: "To Bring About Stability, Enrile Bats for Early Elections." The report says that Defense Minister Juan Ponce Enrile dropped a political blockbuster when he said that the holding of presidential elections will solve the problems of leadership and national instability.

When President Aquino abolished the 1973 Constitution and the Batasan, Enrile said, "She started to govern the country by virtue of the February EDSA revolution and changed the political structure thus creating in the minds of many people that the Philippines is not EDSA and EDSA is not the Philippines." "This is the seeming cause of instability of the government," he added. Enrile, however, recalled that when President Aquino and Vice-President Laurel were installed to the highest position in the land, there was great hope — they would claim the right to govern by virtue of the February 7 election and place themselves under the existing Constitution. "The February polls," he said, "were held in accordance with the law passed by the Batasang Pambansa in line with the provisions of the 1973 Constitution."

In another issue of the Malaya, he was quoted to have said:

Defense Minister Juan Ponce Enrile said yesterday the holding of an early presidential election would greatly stabilize the country and declare he would bat for such move if there is a clamor from the people. He also said he would not seek the presidency because he does not want to get involved in partisan politics. He also acknowledged that President Aquino who came to power last February to a military rebellion that he and AFP Chief General Fidel Ramos led is a very popular person. Enrile traced the country's political instability to the abolition of both the 1973 Constitution and the Batasang Pambansa by the Aquino government after the February military rebellion. "This is the cause of the seeming instability of the government," he said.

Finally, I would like to quote another former opposition leader in the person of Assemblyman Edmundo B. Cea. He was quoted in the Manila Times issue of June 20, 1986. An outstanding, venerable and respected legislator and parliamentarian, the Honorable Edmundo B. Cea, UNIDO, forwarded his view in a stronger language. He said, and I quote:

To completely wipe out the slightest stain that the Aquino government is revolutionary, it is imperative that all elective officials under the Constitution being drafted by the Constitutional Commission should receive the mandate of the people in an election. The proposal to ask the people in a referendum whether they want the President and the Vice-President to continue in office for a given number of years will not serve the purpose. It will be like the practice in communist states like Russia and China where only one slate of candidates is submitted to the people. The election for President and Vice-President should be open to all qualified candidates.

These gentlemen, Mr. Presiding Officer, are not from the opposition. To the extent of being branded as a "balimbing," I would, however, agree with Minister Enrile that President Aquino is "a very popular person." Likewise, I would agree with Minister Maceda that Mrs. Aquino and Mr. Laurel can beat any presidential ticket in an election. In the public consultations we attended, no one would admit that President Aquino and Vice-President Laurel will lose in a presidential election. I even entertain serious doubts whether anyone in his right mind would run against any of them.

So why should the Constitutional Commission deprive the President and Vice-President the chance to settle the legitimacy issue and show to the whole world that they won in an electoral battle? After all, it is Minister Enrile, one of the leaders of the peaceful revolution, who said, "the Philippines is not EDSA and EDSA is not the Philippines." At the very least, in spite of the objections of Assemblyman Cea which I cited earlier and of the article Governor Aguedo Agbayani published in the papers, could we not allow the people a chance to resolve this issue in a referendum as proposed in Resolution No. 111 of the Honorable Rustico de los Reyes? After all, we have already approved in several articles of this Constitution the people's participation in almost all social, political, economic and cultural fields. We have even given them the power to recall duly elected officials of the government.

My last argument, Mr. Presiding Officer, is a moral one. While it is within the power of the Constitutional Commission, as an independent body, to give the incumbent President and Vice-President a fixed term of office, I believe it should not, on moral grounds. There is a difference between what the Commission can do and what it ought to do. The reality is that we are appointees of the President. While I must say that all of us have acted without any hint of intervention from the appointing authority and we are thoroughly independent in our actions, once we give them a fixed term of office without any say on the part of the people, we will continuously be accused of partiality and bias, and it would exhaust all our energies to explain this to the public. I fear sectors that are so inclined will use this as an argument against the ratification of the Constitution and heaven forbid if this well-considered Constitution will fail ratification, all our tireless efforts, sleepless nights and sacrifices shall have been in vain.

This is probably the only time I am privileged to deliver a speech of this nature, Mr. Presiding Officer. In just a

short while, we will be sadly going our separate ways to attend to the personal duties we have abandoned in the service of our country. And with the indulgence of the Commission, may I just say these parting words.

Over the years, I have gone to many places and I have performed all sorts of jobs wherever the winds of fate take me in a never-ending struggle to survive, but I have never been more proud than to serve in this Commission. For even as I work in my designated place, in the midst of our disagreements on political issues, social theories or economic solutions, I can feel that we are welded into a unifying and beautiful oneness in our love for our country. It has been my pleasure to be associated with colleagues who have exhibited generous hearts, worthy and honorable spirits, high sense of responsibility, ethical virtues and cultured intellects, ready at all times to look into a thing, to seek the truth and in no way to ask with prejudice, but only after a thorough reflection.

I, therefore, refuse to believe, Mr. Presiding Officer, that the voices that sometimes rose to their highest pitch in recrimination against the previous administration could not, in a demonstration of goodwill and sobriety, blend harmoniously in giving credence to my cause. If there be a vigorous objection, however, I feel sure that it could come only from a deep-seated conviction, consistent with the laudable aspect of our independence in a democratic environment.

May I just end by saying something about what Commissioner Rigos said earlier regarding the proclamation in the Batasan of the former President and Vice-President. Understandably, as Commissioner Rigos said, many would argue that we had an election, and President Aquino and Vice-President Laurel won in that election, but they were not proclaimed by the Batasang Pambansa because the results canvassed on the basis of the certificates of canvass submitted by the board of canvassers of the provinces, cities and districts, were the product of rampant vote-buying, terrorism, cheating and other electoral frauds. And this precisely resulted in a revolution by the people. This issue can be debated until we turn blue. But the fact remains that they were not proclaimed, nor did they take their oath of office on the basis of the canvassed results. I am not saying, Mr. Presiding Officer, that they did not win in that election. I am saying that they were not proclaimed under the provisions of the Constitution and the laws then in effect. I do not even mind admitting that I was one of the alternate members of the Board of Tellers — there were four regular and four alternate members for each of the ruling and opposition parties with the Speaker as Chairman — and I must indicate in the strongest terms possible that if there was fraud and irregularities in that election, the Batasang Pambansa had nothing to do with it. Its duties were limited to the canvassing of votes reflected in the certificates of canvass submitted before the body, all of which were objected to by the representatives of either of the parties. That is the reason we have inserted in the Executive Article a provision which gives Congress the authority to determine the due execution and authenticity of the certificates of canvass in the manner provided by law, which provision was not found in the previous Constitution.

The Board of Tellers applied the provisions of the Constitution, the Omnibus Election Code, the Special Presidential and Vice-Presidential Law and the rules and regulations of the Commission on Elections in the performance of its functions as a canvassing unit.

The next legal recourse after the proclamation of the winners should have been to file an electoral protest before the Presidential Electoral Tribunal. But before this could be done, the revolution occurred independently of the wishes of President Aquino who was even in Cebu City at that time. Thereafter, the supporters of President Aquino and Vice-President Laurel joined in the undertaking of Defense Minister Juan Ponce Enrile and Gen. Fidel Ramos, and the rest, Mr. Presiding Officer, is history.

Clearly, therefore, the incumbent President and Vice-President took office not because of the results of the elections, but because of the revolution which they themselves did not even plan for. And for that immutable fact, a revolutionary government had to be declared in Proclamation No. 3, otherwise the proclamation could have

easily stated that both of them won in the election and the government is not, therefore, revolutionary but constitutional.

As Members of the Constitutional Commission appointed from an opposition party, the Partido Nacionalista ng Pilipinas, there is a strong possibility that we can be misunderstood in our stand. Let me assure everyone, as Commissioner de los Reyes did, that we are not guided by political considerations in this issue or of other issues presented before the Constitutional Commission. We feel we have contributed enough to the effort of the Commission. We spent time and energy just like every Member of the Commission in a purely non-partisan and objective manner befitting the framing of the fundamental law of the land.

We had expressed our willingness to bend over backwards by joining our colleague, Commissioner de los Reyes, Jr., in his resolution so that the incumbency of President Aquino and Vice-President Salvador Laurel will be given legitimacy through a referendum.

We feel very strongly that if this issue is resolved by the people themselves, it would contribute all the more to a complete transition to constitutional democracy which is not only the desire of the Filipino people but of the President herself.

We are now articulating our stand, with the indulgence of this Commission, on the floor of the Constitutional Commission, in the best way we know how. Even if we lose, we will be gratified in the thought that we shall have done our best to put this government in order and contribute to the stability of our country.

Some have asked us why we decided to accept our appointment to the Constitutional Commission if we do not believe in the legitimacy of the Aquino government. This, Mr. Presiding Officer, requires an answer. We do believe in the legitimacy of the Aquino government in the context of its own declaration as a revolutionary and transitional government. It is a government in place and there is no point in questioning its existence. It is a demonstrable fact, unless one is blind to see it. It has been accepted by the family of nations and President Aquino herself had been accepted in state visits to Indonesia, Singapore and the United States, not to mention the earlier visit of Vice-President Laurel to other nations. I am prepared to admit that President Corazon C. Aquino and Vice-President Salvador H. Laurel are highly credible and very popular with our people and this is a very healthy sign for our country. But all these do not make the government any less revolutionary. What I am saying is that the Constitutional Commission should make good use of its authority to provide an opportunity for the incumbents to put to rest the legitimacy of their positions. It would be a disfavor to them should the Commission simply give them a fixed term of office and it would make the Commission extremely vulnerable to attack on its much vaunted independence.

Only a national election or, at the very least, a referendum could strengthen the term of office of the incumbent President and Vice-President. We are fully confident that all our colleagues in the Constitutional Commission, regardless of ideology and persuasions, will consider this matter seriously and objectively for the sake of our country and our people.

Thank you, Mr. Presiding Officer.

MS. AQUINO: Mr. Presiding Officer, I have been momentarily designated to act as Floor Leader. I think the next in line is Commissioner Guingona. May we request for the recognition of Commissioner Guingona.

THE PRESIDING OFFICER (Mr. Tingson): The Chair recognizes Commissioner Guingona.

MR. GUINGONA: Thank you, Mr. Presiding Officer.

I am constrained to take issue with those who contend that the Constitutional Commission should not give the

incumbent President and Vice-President a fixed term of office in the draft Constitution. I support the proposed provision now being debated in this plenary session that the incumbent President and Vice-President shall hold office for a term of six years until 1992. The principal reason for my support of this provision is that the incumbent President and Vice-President had won in the snap elections of February 7 this year. No less than the Minister of National Defense, who was earlier quoted while calling the people to come and help the military last February, had stated that he was opposing Marcos because he was convinced that Mrs. Aquino and Mr. Laurel had won the elections and the people who responded evidently shared that view. Even now, a majority of our people believe that Marcos lost in the snap elections and President Aquino won. And I have to thank the honorable Commissioner Maambong for giving me support in this regard when he cited sentiments expressed by our people in the more than 50 public hearings that we have had from La Union, in the north down to Marawi City, in the south. These people acclaimed or affirmed the victory of President Aquino and Vice-President Laurel. Messrs. Marcos and Tolentino won only in the Batasang Pambansa and their victory was a victory "by asterisks."

No one disputes the fact that the present government is a revolutionary government, but one should point out that it is a uniquely revolutionary one in the sense that the change of government was brought about, first, by an election regularly called under an enforceable Constitution — and I would like to repeat that, Mr. Presiding Officer, it was a change brought about by an election regularly called under an enforceable Constitution — and, second, by a peaceful revolution with hardly any bloodshed. One should not liken the present revolutionary government to the revolutionary government of President Aguinaldo or other revolutionary governments which were established through armed rebellion. This revolutionary government is functioning under a constitution which has retained the inalienable rights of the people granted or affirmed in the 1973 Constitution.

As a matter of fact, Mr. Presiding Officer, pursuant to Article I, Section 3 of the Freedom Constitutions only — and I repeat, Mr. Presiding Officer, only — Article VIII (Batasang Pambansa), Article IX (the Prime Minister and the Cabinet), Article XVI (Amendments) and Article XVII (Transitory Provisions) and all amendments thereto have been superseded. The human rights enshrined in the 1973 Constitution have been retained and are found in the Freedom Constitution. Not only are they retained, but we know that these rights have been respected by this government, the Aquino government. Truly it can be said, therefore, that our governmental, the Aquino government, though revolutionary is also a constitutional one. When Proclamation No. 3 speaks of transition to a new constitution, it would refer to a transition from one constitution to another. The change was effected primarily, and I quote:

. . . to completely reorganize the government and eradicate unjust and oppressive structures and all iniquitous vestiges of the previous regime.

This was the demand and the sentiments of the people then and the demand and the sentiments of the people now. Such change should not affect the legitimate claim of the incumbent President and Vice-President to their respective positions. Thus, if in some future time a constitutional convention is organized and it formulates a new constitution which is ratified during the midterm of the then incumbent President and Vice-President, such ratification should not and would not affect their term of office. Why should, therefore, the change of Constitution now affect the term of office of the incumbent President and Vice-President?

In reply to the honorable Commissioner Maambong's reference to Proclamation No. 3, which he said mandated the holding of national elections, may I say that Proclamation No. 3 must be read in its entirety. If we do so, it would be clear that presidential and vice-presidential elections are not at all contemplated therein. There is a specific provision regarding the election of a legislature — Article II, Section 1 — but no mention whatsoever is made concerning presidential and vice-presidential elections.

Regarding the statement of the honorable Commissioner de los Reyes that the election of the President and

Vice-President is a political question, we agree. And we say that it is a political question and it has been decided by the people. Therefore, the claims of the President and the Vice-President to their positions are legitimate claims.

There are those, Mr. Presiding Officer, who would say that President Aquino and Vice-President Laurel should submit themselves to an election if the Constitution is ratified, while there are those who assert that they should submit themselves if the draft Constitution is rejected. This obviously places them in what we may describe as a no-win situation. But why should President Aquino and Vice-President Laurel run for election, if the Constitution is ratified, if they have been duly elected last February under the 1973 Constitution — whether we consider it *de jure* or *de facto* — which at the time of the election was existing and in force? As a matter of fact, it was President Aquino's government which initiated the drafting of the new Constitution. There are those who say that there are no statistics to support the claim that President Aquino and Vice-President Laurel won. If we rely on the COMELEC electoral results, then perhaps that statement, Mr. Presiding Officer, is valid. We know those results were based on fraudulent and dishonest returns, which fact was underscored by the dramatic walkout of the computer personnel at the PICC. But a credible, nationwide result, that of NAMFREL, shows a clear trend that President Aquino won with 7,909,320 against 7,356,599 for Marcos; while Vice-President Laurel won with 7,658,570 against Tolentino's 6,978,702.

The legitimacy of the Cory government was affirmed by the acclamation of the people not only during the peaceful revolution of February 22-25 but up to the present as well by its recognition and acceptance by the community of nations including the two superpowers, the United States and Russia.

Regarding the assertion, Mr. Presiding Officer, that President Aquino should submit to an election in case the draft Constitution is not ratified, my position is that it is not President Aquino who drafted or who is drafting the Constitution; it is the Members of the Constitutional Commission. If there are those to be blamed, it should be the membership of the Commission. Although it is true that we were appointed by President Aquino, the fact is that we were appointed pursuant to the provision of Proclamation No. 9 upon nomination of political parties or aggroupments of parties — civic, religious, ethnic or other sectoral groups — or individual citizens. We will recall that during our first session, President Aquino spoke before the Commission. And in that speech she promised she would not in anyway interfere with the work of the Commission, a promise which we and everyone here in the Commission know she has faithfully kept. How then can some people blame her for the rejection of the draft Constitution and as a consequence require her to submit to an election?

Finally, Mr. Presiding Officer, there is also the non-legalistic and pragmatic consideration that at a time like this when we are confronted with a serious insurgency problem, it may not be prudent to be changing government in mid-stream, so to speak. The insurgents may take advantage of the campaign period to try to destabilize our government. Let us not provide them with the opportunity, no matter how slight, to succeed in this objective.

Thank you, Mr. Presiding Officer.

MS. AQUINO: Mr. Presiding Officer, we request that Commissioner Bengzon be recognized.

THE PRESIDING OFFICER (Mr. Tingson): Commissioner Bengzon is recognized.

MR. BENGZON: Mr. Presiding Officer, I am privileged to speak on this subject matter, one which shoots into the very core of our current history, one around which resolves our whole nation's hope for recovery, politically and economically, at meteoric speed. But for me to be understood clearly, I must flash back into history and for this, I ask the body's indulgence.

In November 1970, the nation elected delegates to a constitutional convention. I was part of that group. A good

number of us were filled with inspiration and hope. We began to rewrite our fundamental law. But in September 1972, a black knight rode into our lives and promising a new and better life for our people under a new society, lulled a number of us into cooperation. Thus, we finished a constitution and we pinned our hopes and trust on this black knight. But as the years rolled on, as human frailties tightened their grip on him, this knight became truly black in mind and in spirit and diluted the Constitution with his own formulated concoction which enshrined him into a definite direction of total dictatorship. The Philippines and its people were then made to swallow a way of life and a set of rules unacceptable to them. Some managed to spew it; others unwillingly and helplessly swallowed it as they prayed for liberation. And so, it was then that we had a constitution imposed upon us, interpreted at will by a dictator and his cohorts and willingly syncopated by a controlled judiciary. Then, the decision to hold snap elections was handed down. The manner and procedure thereof were solely decided by one man. We had no choice. We either had to participate or forever hold our peace. And we did participate. And we won. And we found ourselves in a situation where despite submitting ourselves unwillingly to the provisions of an unacceptable constitution, despite playing under rules heavily stacked against us, nay, despite all odds, we won. But that victory was not meant to be realized under the dictator's own rules, rules which he himself violated to vitiate the people's will. Democracy was slaughtered once again. But the death of truth gave birth to justice. The will of the entire nation, from the rocky shores of Batanes to the seaside sands of Jolo, infused life into democracy and resurrected it from the dead. People's power, simultaneously demonstrated from the north to the south, from the east to the west, showed the world that sheer determination, unselfish unity, a resolve to die for one's country and an absolute belief in the Almighty can capture back democracy and enshrine Mother Liberty and Lady Justice without violence and bloodshed. A clear and direct expression of the people's sovereign will installed President Aquino and Vice-President Laurel.

And so, Corazon Aquino was installed as President and she promulgated the Freedom Constitution. The issues then are: First, are President Aquino and Vice-President Laurel legitimate possessors of power? Second, are they revolutionary officers and, therefore, must be subjected to a new mandate under new electoral processes? Third, are we fixing a term for them? And fourth, would their inclusion in this article destabilize the government?

Mr. Presiding Officer, on the first question, the dissertation I have just delivered shows that they are the legitimate possessors of power. They were the duly elected officials in the February 1986 election. In an unguarded and spontaneous declaration at the beginning of the revolution, no less than Defense Minister Juan Ponce Enrile stated that Corazon Aquino and Salvador Laurel were the truly duly elected President and Vice-President, respectively. They continue to be recognized by the family of nations as the duly elected and legitimate officials of our Republic, and in this forum, we need not belabor the veracity of this fact as we are all privy in one or another to the massive frauds of all kinds employed by the ruling party then in violation of its own rules to thwart the true expression of the people's sovereign will.

On the second question, President Aquino and Vice-President Laurel and their government are revolutionary only in the sense that they were installed directly by the sovereign will of the people and that the Freedom Constitution repudiated the obnoxious portions of the 1973 Constitution, portions which were never intended at all by the delegates who framed them, portions which were the formulated concoctions of the dictator to entrench and perpetuate himself in power. This selective repudiation does not categorize President Aquino in a situation where her term automatically terminates upon the ratification of this Constitution. It does not affect the validity and legitimacy of her election as President for a six-year term.

The diluted 1973 Constitution was an imposition. The people had no choice. There was no way under which the people could operate, and having won the elections under that Constitution did not mean its total acceptance. Winning despite all odds is an irreversible fact which, however, is no bar to the rejection of the basis under which

the election was won especially if that victory was promulgated by a revolution caused only by the deliberate failure of the people's representatives to proclaim the true victor. To put it in simpler terms, if the political exercise were a sport's game, the President was in an apparently no-win situation. The dictator chose the time to play, the venue and the court. He chose the referees, the scorer, the timer and the recorder. He had under his control even the people sitting in the back seats. The situation was certainly unacceptable, but President Aquino either played the game or totally surrendered and she chose to play. But by playing the game and having won it did not mean that the President accepted the validity of the rules, of the calls of the referees, of the accuracy of the Scorers' count and of the recorders' entries. Neither did it mean that the President could not repudiate all the deliberate errors and dismissed all those involved therefor.

And so, Mr. Presiding Officer, it is clear that the draft provision does not legitimize President Aquino because she is already legitimate. It does not give her a fixed term because her term is fixed; rather, it reiterates her legitimacy and eliminates any doubt as to her six-year term and further provides for her to hold over until June 1992 when the newly elected President shall then take over.

Thus far, Mr. Presiding Officer, I have discussed the legal aspect, the scholarly facet and the technical factor of the question, but important too in these issues are the practical aspects. Would we destabilize the government, disappoint the people and cause them to be listless and restless? Warnings have been aired that such consequences shall take place should this Commission insist on this draft provision. I submit that the contrary would be true. The reiteration of President Aquino's term given to her in the February elections would erase any speculations from the minds of the innocent and dash any evil thoughts from the minds of the wicked. And its being in the Transitory Provisions would clearly fill the vacuum that would be generated from February 1986 to June 30, 1992.

To those who advocate and urge the President to run for election to resolve the issue once and for all and to show everyone that the President would win in any case, I have this to say: We are dealing with a fundamental principle, a fact that hits at the very core of our current history. There is no room for compromise; there is no place for convenience.

Thus, it is clear, Mr. Presiding Officer, that this government is revolutionary in origin, as it was installed by a bloodless revolution; democratic in essence as the President was duly elected by the people; and transitional in character in that the Freedom Constitution in force is temporary in nature.

I ask you then, my colleagues, to vote for the draft provision, the very focus of our political survival today

Thank you.

MR. CALDERON: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Tingson): The Assistant Floor Leader is recognized.

MR. CALDERON: I request that Commissioner Natividad be recognized.

THE PRESIDING OFFICER (Mr. Tingson): Commissioner Natividad is recognized.

MR. NATIVIDAD: Thank you, Mr. Presiding Officer.

As we address the last controversial issue in this Commission, I would like to start my statement by saying that remarks in opposition to this section are not meant, in any way, to cast aspersion on the President and the Vice-President.

The President has meticulously kept her pledge of nonintervention in the affairs of this Commission. Masasabi

nating hindi nakialam o nagtangkang makialam sa gawain ng Komisyong ito ang Pangulong Aquino o ang Pangalawang Pangulong Laurel.

Proclamation No. 3 established the irrevocable position of the incumbent President and Vice-President. That the source of their mandate is the February revolution, not the February election.

The proclamation declares that the new government was installed by direct exercise of the power of the Filipino people assisted by units of the new Armed Forces of the Philippines. They repudiated the 1973 Constitution which was the basis of the 1986 snap elections and which was the authority for their six-year terms.

Proclamation No. 3 categorically announced that the heroic action of the people was done in defiance of the provisions of the 1973 Constitution.

Since the President and Vice-President derive their mandate from the revolutionary government, it follows that such mandate is coterminous with the revolutionary government. No doubt the establishment of a revolutionary government was effected to achieve some laudable objectives, but I believe that in doing so there are also disadvantages, one of which is its effect on the mandate of the incumbent President and Vice-President.

The revolutionary government ends upon the ratification of this Constitution and with it, ends the mandate of the incumbent President and Vice-President to govern. Upon approbation of the new Constitution, there will be a totally new government. If the incumbent President and Vice-President wish to continue in office, they should abide by the new Constitution and seek such mandate by election.

The Constitution which we drafted provides for the Office of President and Vice-President. It also provides for the mode of filling it up, that is, by election and not by plebiscite.

Section 4 of the Article on the Executive provides, and I quote:

The President and the Vice-President shall be elected by direct vote of the people for a term of six years which shall begin at noon on the thirtieth day of June next following the day of the election and shall end at noon of the same date six years thereafter.

Section 3 states:

There shall be a Vice-President who shall have the same qualifications and term of office and be elected with and in the same manner as the President.

At the advent of this new government created under a new constitution, all the national, as well as the local officials, shall be ejected by a direct vote of the people. But this section makes the President and Vice-President as exceptions.

The highest and the second highest officials of the land in this entirely new government shall continue to perform their duties as such, not by election, not by referendum but by means of a political rider in the Constitution.

This, I submit, Mr. Presiding Officer, is inconsistent with the moral posture of the new Constitution and of the new government.

Such a rider brings to mind a similar provision in the Pakistan Constitution, and I quote Article VII of the Referendum Order:

. . . and General Mohamad Zia ul-Haq shall be deemed to have been duly elected President of Pakistan for a term of five years from the day of the first meeting of the House of Parliament in joint sitting.

This was in December 1984, and since then Pakistan has never seen the light of day.

Endless demonstrations and rallies reflect the objections of the nation in this situation. It has been said in a column that the endorsement of the incumbent President is vital to the ratification of this Constitution. This means that the perception is the incumbent President is extremely popular, and one reason is that she has not evinced the usual greed for power.

But the matter of her continuance in office is in the body of the Constitution and that an affirmative vote for the draft Constitution is a vote for her continuance in office. I entertain some doubts if she will campaign openly for this draft Constitution for reasons of delicadeza.

Due to the high moral standard with which she started her administration, she might consider this as self-serving. I say this because everytime she asks for the ratification of this Constitution, she, in effect, is asking for a continuance in the performance of her duty as President.

A columnist also said that a separate question asking for her continuance in office should not be fielded because of a possibility that more votes may be cast in favor of the Constitution than the affirmative votes for her continuance in office. And if such a case happens, it is feared that her popularity will suffer. I beg to disagree with this. First, the possibility of such an occurrence I believe, is remote. As a political leader, the incumbent President is just beginning to peak. The zenith of her popularity has not yet been reached. And thus, as she achieves one success after another, I believe she will be further enshrined in the hearts and minds of our countrymen.

So I believe that in any event she will outvote the Constitution. But granting arguendo that the Constitution garners more votes than the President, so what? I do not see anything catastrophic about it. The Constitution is not a political rival; the Constitution is non-partisan. People with diverse convictions will vote for the Constitution because they want this Constitution and especially so because they want an election. If people will take the trouble of comparing the 1935, the 1973 and the 1986 Constitutions article by article and section by section, I am firm in my belief that they will find the 1986 Constitution more dynamic and more responsive. On the other hand, the President, being a politician, has a built-in opposition and it is possible, therefore, that there will be a lot of votes against her.

Sa panghuling panawagan kong ihiwalay natin sa Saligang Batas ang pagpapatuloy sa tungkulin ng Pangulo at Pangalawang Pangulo ay nais kong gamitin ang wikang pambansa.

Ang Saligang Batas na ating isinulat at binalangkas ay tulad ng isang makinang na koronang batbat ng pinakapiling tapyas ng brilyanteng ipuputong natin sa noo ng ating Inang Bayan. Magandang korona ang ating inihanda sapagkat bukod sa hindi lamang may mga pinakapiling tapyas ng brilyante ay may mga butil pa ng gintong kaisipan ng mga magigiting at mabubunying Kagawad ng Komisyong ito. Subalit kung sa magandang koronang ito ay isasama natin ang seksyong ito na itinuturing nang halal ang Pangulo at Pangalawang Pangulo, ang katulad ng seksyong ito ay isang batong walang kinang, at kung may kinang man ito ay brilyanteng may karbon na siyang magpapapangit sa koronang ating inihahanda para sa ating Inang Bayan. Kung ang ating inihandang Saligang Batas ay ihahambing naman natin sa isang malambing na tugtugin na siya nating gagamitin sa pagkatok sa dibdib ng ating bayan, ang seksyong ito na ating tinatalakay ay isang notang sintunado na masakit pakinggan sa tainga; kahit maganda ang kalahatan ng mga tugtugin, kapag nadinig ang sintunadong notang ito ay maaaring maging dahilan na hindi tayo pakikikingan ng ating Inang Bayan. Kung baga sa isang dalagang hinaharana ay hindi tayo patutuluyin dahil sa notang sintunado at bagkus pa ay baka talikuran tayo at lubusang layuan at hindi pagtibayin ang ating Saligang Batas.

Salamat Po.

MR. CALDERON: Mr. Presiding Officer, I request that Commissioner Ople be recognized.

THE PRESIDING OFFICER (Mr. Tingson): The Chair recognizes Commissioner Ople.

MR. OPLE: Thank you very much, Mr. Presiding Officer.

May I note that whenever this body had been faced with difficult issues, our President and the other Members of the Commission always rose to the occasion with understanding and liberality towards those holding the minority view. I see much evidence of this civility, even magnanimity, tonight for which I thank the President and all the other colleagues.

Mr. Presiding Officer, we are into the fifth month of our labors in drafting a new Constitution. Most of our countrymen are only vaguely aware that something important to their lives is being shaped here. They know that we who serve here have been handpicked by President Aquino to write a new charter for the Filipino people during a new watershed of their history. No one sits here who has not experienced the grace of being chosen by a popular President and even ennobled by her own credentials. It is true that the framers of a constitution should be elected but because she chose us and her sincerity is seen as her greatest strength, our people for the most part have given us the benefit of the doubt. Most of them, most of our people, trust us implicitly to do what is right. The provisions we write may appear to many of them as the opaque language of lawyers, impenetrable to the common man or impervious to common understanding. But there will be time enough to examine the draft Constitution and its various provisions during the plebiscite campaign. Yet the Article on Transitory Provisions, which should be an incidental feature to the Constitution, is now looming as the foremost concern of many of our citizens throughout the country over the constitutional horizon literally overnight. The provision fixing a term of six years for President Aquino and Vice-President Laurel as an integral part of the new Constitution has become the focal point of a major controversy that can overshadow the debate on the merits of the draft Constitution itself. This is an issue that is not wrapped up in technical or legal enigmas. This is an issue that appeals to the people's senses based on direct experience of recent events. It is an issue capable of reviving earlier traumas because it is direct experience that equips us with alarm bells — our own human sensing mechanism for danger.

The danger is that large numbers of Filipinos might accuse us of transporting through this Constitution a six-year term for President Aquino who appointed us and investing her with a full constitutional regularity following the expiration of her revolutionary and provisional government — a status that here and in other democratic nations is earned only through elections. You may then ask: Did she not win the February 7 election? Is it not a fact that she won but was cheated of her victory because of the Batasang Pambansa proclaimed instead Ferdinand Marcos and Arturo Tolentino? Was not the February revolution precisely mounted to reverse that decision of the Batasang Pambansa? Has not the entire committee of nations recognized her government as legitimate? Has not the Supreme Court declared this government not only de facto but de jure in character? Finally, is it not a fact that President Aquino enjoys popular support throughout the country?

As a humble Member of the Constitutional Commission from the opposition, I reaffirm my belief in the legitimacy of the Aquino government; otherwise I will not be here. But it was President Aquino herself who defined the character and the limits of that legitimacy. When she assumed power as a result of the February revolution, she was faced with one or two choices: first, to govern under the 1973 Constitution under which the elections of February 7 took place and which conferred a six-year term on the President and the Vice-President subject to an official proclamation by the Batasang Pambansa; second, to set aside that Constitution and establish a revolutionary provisional government with its own interim Constitution.

President Aquino, as we all know, chose to disregard the 1973 Constitution which conferred a six-year term on the winner of the presidential election. She adopted, however, 14 of the 17 articles of that Constitution and made them the framework of her own Proclamation No. 3 which was christened the Freedom Constitution.

Proclamation No. 3 established the revolutionary government, claiming as its source of authority not the results of the February elections but the direct mandate from the people through the February revolution at EDSA.

In the language of the Minister of Justice, Honorable Neptali Gonzales, that government, and I quote, "is revolutionary in origin, democratic in essence, and transitory in character." Minister Gonzales further admitted that the powers of a revolutionary government are absolute in character, except for such limits as it may itself impose through law.

The new government thereupon gave effect to its proclamation by abolishing the Batasang Pambansa, where one-third of its membership had been elected from the opposition, with the President assuming the legislative power. It replaced the elected governors and mayors with officers-in-charge (OICs). It removed for one year the mantle of security of tenure for the judiciary and the entire civil service. It looked the other way when the sequestration, search and seizure powers of the Presidential Commission on Good Government clashed with the Bill of Rights in the Freedom Constitution.

But the revolutionary government — and this is what is remarkable about it — stipulated its own self-destruction under the Freedom Constitution. The self-destruct mechanism was the provision that calls for a new Constitutional Commission, later implemented through Proclamation No. 9. With deliberate haste, the Commission was constituted by the 2nd of June. President Aquino herself came here to ask us to act with complete independence.

As soon as the Commission was constituted, it cut its own umbilical cord to the appointing power, according to Francisco "Soc" Rodrigo. It freed itself from any prior restraint, according to President Cecilia Muñoz Palma. Since then, we have been obsessed by that single purpose to write a new constitution that, once ratified by the people, will terminate the revolutionary government and inaugurate a full constitutional government.

In her speeches before the U.S. Congress, President Aquino took pride in that noble design of completing the restoration of constitutional government within one year from her assumption of power as the head of a revolutionary regime. She referred to the zealous independence with which this Commission was pursuing its work.

Mr. Presiding Officer, this is an act of political obligation without precedent in the modern world. A leader assumes revolutionary powers, gathering unto her hands virtually all the powers of the three branches of the government. But she also immediately provides for surrendering them back to the people through a new constitution within a definite time frame of one year. That time frame is important because it justifies the appointment of a constitutional commission. An elected constitutional convention, if 1971 is a gauge, would have taken at least two years to finish a draft.

It is in that perspective that we can give President Aquino, if we like, a certain benefit of the doubt for discarding the 1973 Constitution, abolishing the Batasang Pambansa, and ruling by decree as her predecessor did as though to mock her own counterpledge to abolish Amendment No. 6 as her first act if she was elected President. She set the time when all this power self-destructs upon the adoption of the new Constitution which we are framing here. That is when the revolutionary government ceases, and a new government anchored to a new Constitution begins. A government described officially as revolutionary in origin, democratic in essence and transitory in character becomes transformed into a regular constitutional government with its powers carefully allocated to the three branches of the government — the executive, legislative, and judicial and the rights of the people against their own government clearly defined.

The great authorities on constitutions, from Aristotle to Russo, Hobbes and Locke, perceived a constitution as

preceding the formation of a state, or at least laying down its constitutive principle. It marks the inauguration or at least the renewal of a democratic policy, to the extent that the leaders of that revolution, upon the adoption of a constitution, submit themselves to a popular mandate to be invested with constitutional regularity.

That regularity, Mr. Presiding Officer, cannot be conferred by the Constitution itself; it is earned through a popular mandate. President Aquino could have chosen to govern under the 1973 Constitution; she could have taken her oath unequivocally under that Constitution; she could have been proclaimed by the Batasang Pambansa; she could have taken the advice of her most numerous advisers, including the incumbent President of the Constitutional Commission, Justice Cecilia Muñoz Palma, and the Defense Minister, to preserve her claim to full constitutional regularity from the start, including a six-year term granted by the 1973 Constitution to the duly elected and proclaimed President and Vice-President. The fact, Mr. Presiding Officer, is that she did not do so. In the organic act of the revolutionary government, Proclamation No. 3, she invoked the extraordinary people's action of February 22 to 25 as the source of her authority to govern. She said that people's action at EDSA was carried out in defiance of the 1973 Constitution. Her Minister of Defense whose defiance actually triggered that uprising never agreed with her. He asserts that at least the troops who mounted that revolt wanted to uphold rather than set aside the 1973 Constitution.

Recently at the "Kapihan sa Maynila" where he was the lone guest, Minister Enrile said, "the people at EDSA were not synonymous with the Filipino people." But as I said earlier, President Aquino was entitled to choose her own course. She chose a revolutionary government instead. The point is that she cannot now avoid the consequences of that choice. She cannot claim an automatic six-year term under a constitution that she has disregarded. She and many millions of Filipinos, of course, believe that she won the elections of February 7 that were held under the Constitution of 1973. There are also millions of Filipinos who believe that her opponents, Marcos and Tolentino, won. We may never know who really won those elections unless the ballot boxes are reopened under the scrutiny of a fully impartial tribunal. When I put the question to the Chairman of the COMELEC, Mr. Ramon Felipe, during a hearing of the Committee on Constitutional Amendments and Transitory Provisions just exactly who won the elections of February 7, 1986, Mr. Felipe refused to answer my question. The fact is that President Aquino in her Freedom Constitution which defined her revolutionary government did not invoke the elections of February 7 as the source of her authority. She was not proclaimed by the Batasang Pambansa, a necessary act to consummate the election of the President and the Vice-President under the 1973 Constitution and without which the election is, legally speaking, void. It was the same Constitution that gave the elected President and Vice-President a six-year term. President Aquino and Vice-President Laurel are now in power by virtue of a revolution which abrogated the 1973 Constitution. They cannot claim an automatic six-year term of office which could only arise from the authority of a constitution that they had abrogated. By the terms of the Freedom Constitution, the organic act of the revolutionary government, this government itself self-destructs upon the adoption of the new Constitution except insofar as the Transitory Provisions prevent the occurrence of a vacuum or a hiatus during the change of government.

Mr. Presiding Officer, I doubt that this Constitutional Commission can, without doing violence to its independence and integrity, assume the competence to grant President Aquino a six-year term, as though it can substitute its will for the will of the people in a valid election. It may also not be within our power to substitute our will for that of a constitutional electoral tribunal which under the 1973 Constitution had sole power to adjudicate disputes with respect to presidential elections. Nothing prevents us from proceeding on faith even the unshakeable faith, that she won the elections; but that is different from saying that under the Constitution existing at that time she had, in fact, won it. The provisions of a constitution, as we must admit, are not negotiable; rather I firmly believe that the task of this Constitutional Commission is not to sit in judgment of the elections of February 7, 1986 but to prescribe how the nation may choose its leaders past interregnum between a revolutionary and a

regular constitutional government. The draft Constitution we are framing provides for the election of the Members of Congress in a restored bicameral system. It provides for the election of governors and mayors and the members of their city and municipal councils. And yet, it fails to provide for the election of the President and the Vice-President whose terms have to be coterminous with the revolutionary government that self-destructs when this Constitution is ratified.

Mr. Presiding Officer, against the views of my own colleagues in the opposition, I hold that President Aquino is a popular leader. I hold, again as a minority within the minority, that she cannot be beaten in an election if one is held now. She may have committed her share of mistakes since she assumed power and the powers of government may have been abused by some of her subordinates, but as far as most people are concerned, her own sincerity has never been sullied.

But popularity is no warrant for anyone to be anointed by the Constitution, and sincerity requires its own continuing proof. We are appointed by President Aquino and in the cultural context of our people, this constitutes a bond of reciprocity. When we fix her term automatically at six years, she will not be presiding over her own coronation. It looks to me that the Article on Transitory Provisions, which is an incident to the drafting of a constitution, had once again become the central issue, the locus of paramount power. It will be said that the Constitutional Commission merely proposes, the electorate disposes. Section 7 fixes the six-year term for President Aquino and Vice-President Laurel subject to the ratification of the Constitution. If the Constitution is not ratified, then the proposed term itself does not become operative.

The spokesman of the government says that if there is a failure of ratification, we go back to the revolutionary government under the aegis of Proclamation No. 3 or the Freedom Constitution without any term of office for the President and the Vice-President. The implication is clear. They have no term now, and this Commission is called upon to provide it. But this Commission consisting of her own appointees may do so only on a presumption that she won the presidential elections of February 7, 1986 under the 1973 Constitution that was then in force and that as of right, therefore, she and her Vice-President are entitled to an automatic term of six years from February 25, 1986 to February 25, 1992.

The Commission has to perform its task of adjudication. Before it can fix the term of the President and the Vice-President, it has to act as a presidential electoral tribunal. How can we, as appointees of President Aquino, most of whom fought for her election in the February 7 elections, claim the minimum impartiality that should be required of such an adjudicatory body? And yet, the Commission has already adjudicated the case as borne out by the sponsorship speech of the Honorable Jose Suarez, chairman of the committee.

Since President Aquino and Vice-President Laurel won the February 7 elections, according to this view, they possess a clear and undisputable mandate which for some reasons has never been interrupted even after they set aside the Constitution that authorized the elections, and proclaim their revolutionary government, drawing its authority from a revolution, not on election.

Mr. Presiding Officer, I believe we have now fashioned under the leadership of President Cecilia Muñoz Palma a draft Constitution that can stand the harshest test any critic can devise against it. It states the constitutive principles for the Philippine State. It makes for a government of great symmetry in its constituent power. It strengthens the rights of the people against their own government. It restructures the social and economic order to emphasize greater equity and justice for the poor and underprivileged; it buttresses national sovereignty and independence; it lays the basis for lasting peace and fraternity among the constituent units of the State.

When this Constitution is unveiled in full for the examination of our people, I believe they will find it worthy of their trust and support. Writing it has been an epical task, combining the prodigious labors of 47 men and women

drawn from a cross section of Philippine society, drawing contributions from many thousands of Filipinos, some famous and others obscure, who joined our endless consultations. But all these energies may have been exerted to a vain end if at the end of that epic quest for a new constitution, we are seen now as bending it to suit the political convenience of those now in power.

Many of our people will see in this Section 7 the appearance of an organized effort to exploit a new constitution, a new political framework of which we are justly proud, to insure the constitutional regularity of President Aquino and Vice-President Laurel. President Aquino herself, whose sincerity is her own invincible armor, may see this armor being breached for the first time by a new skepticism about her sincerity. And yet, this is all so unnecessary. The path of least resistance is always suspect. Men and women who succeed best in the real world choose to follow the path of the greatest moral fraction. President Aquino herself has risen to power by preferring the harder moral choices when she could have settled for less.

Mr. Presiding Officer, the fixing of her term for six years in Section 8 is the easiest thing to do for this Constitutional Commission. All it entails is that we shut our eyes to the harshness of constitutional and historical realities, and we can after all take ultimate refuge in gratitude. But the cost can be very high, Mr. Presiding Officer. This draft Constitution so painfully written together in an ordeal of free and acrimonious inquiry day after day may end up tainted with partisanship, if not political self-aggrandizement. The independence of this Constitution, in which we take such an enormous pride, may end up compromised. The sanctity of this Constitution, even assuming its ratification, will forever be marred by the doubts raised in Section 8. This provision, by itself alone, can reopen the wounds and traumas of a past conflict and threaten the very political stability which this new Constitution is set to guarantee.

Mr. Presiding Officer, it is for that reason that I urge a presidential election upon the adoption of this Constitution, which may be simultaneous with the national election we have already approved for May 11, 1987.

I am now in my concluding portion, Mr. Presiding Officer. I am tempted to take advantage of this opportunity, like my colleague Maambong, to tell you how deeply we appreciate the privilege given us by President Aquino to serve in this Assembly. I believe we have returned or tried to return this trust by the highly independent, responsible and indefatigable manner in which we have shared the work of the Commission. The document we have drafted will soon become a great covenant between our people and government. That covenant should not suffer from one single flaw that will affect the integrity of the rest of the Constitution in the sight of many millions of our people.

Finally, Mr. Presiding Officer, may I close with an appeal to my colleagues in the Constitutional Commission. Please listen to your own inner voice, the authority of your own conscience, and to no one else as you face this question.

Thank you very much.

MR. CALDERON: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Tingson): The Assistant Floor Leader is recognized.

MR. CALDERON: I would like to suggest to the Chair that subsequent speakers be limited to five or 10 minutes each.

MR. RAMA: I will limit myself to three minutes.

MR. CALDERON: If it is 10 minutes, let it be so.

I request that Commissioner Rama be recognized.

THE PRESIDING OFFICER (Mr. Tingson): Commissioner Rama is recognized.

MR. RAMA: Thank you, Mr. Presiding Officer.

Over half a dozen brilliant Commissioners arguing with some devotion in favor of the provision recognizing the legitimacy of President Aquino and Vice-President Laurel and granting them their full term of office up to 1992 is a hard act to follow. It seems all the arguments in support of the provision have already been stated, belabored and exhausted.

But let me bring up one more unstated argument. I must grant that the major arguments of those who oppose the provision, even if legalistic, would have been invested with legal logic, much impact and great persuasion, if the setting were ordinary and the circumstances and events back of such arguments were the usual kind.

For sure, there is a legal distinction that can be made between a constitutional government and a revolutionary system, between February 7 — election day — and February 25 — the day of the revolution — as a time frame for Cory Aquino's assumption of the presidential mantle, between constitutional legitimacy and revolutionary legitimacy, between a proclamation by the parliament in the Batasang Pambansa and the parliament in the streets. But unhappily for those who passionately argue for a need of a new election and a new term for the President, the happenings and facts that were the bases of their arguments, their underpinnings were out of the ordinary.

We are talking here of an election, an electoral cheating witnessed not only by the Filipino people but by the whole world. We are talking here not of the usual bloody revolution but one unmatched and unparalleled in the history of mankind. We are talking about a revolution seen not only by the Filipinos but by the whole world.

We are talking about the proclamation of Cory Aquino as President not only by the Filipino people but a proclamation made by the nations of the world. We are talking about a verdict of election victory rendered not just by the Filipino people but by the whole world. It was not just the Filipino people who proclaimed Cory Aquino winner and President of the Philippines; it is the family of nations in our planet.

So final and conclusive had been the proclamation and the verdict of the world that up to now no nation is willing to accept the deposed dictator and his wife even as refugees. In fact, the revolution and the presidency of President Aquino are now rated as one of the top global events of the year 1986.

One of the largest facts of life in the world today is that President Aquino is the legitimate President of the Philippines. For the Filipinos themselves now to question the legitimacy of President Aquino after the whole world had conferred on her such legitimacy, the whole world will never understand. The nations of the world may start calling into question the sanity of the most admired people in the world today. I do not want to be a party to the diminution of the Filipino people. To avoid that diminishing of the Filipino people, I vote for the provision.

Thank you, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Tingson): The Floor Leader took only three minutes.

MR. CALDERON: Mr. Presiding Officer, I request that Commissioner Garcia be given the floor.

THE PRESIDING OFFICER (Mr. Tingson): Commissioner Garcia is recognized.

MR. GARCIA: Thank you, Mr. Presiding Officer.

I would like to attempt a brief political analysis to lay the basis for the recognition of the mandate of the present government which Section 7 now merely affirms and further defines by providing a six-year term beginning from the 25th of February 1986.

The Philippine political experience is unprecedented, unedited, admittedly unfinished, yet unique, legitimate real.

Corazon Aquino was installed President by the sovereign will of the people, expressed in the electoral verdict of the 7th of February and the popular revolution which defended the clear mandate she had won.

Contrary to myth, the Philippine experience was not largely a snap revolution limited to the National Capital Region. For certain sectors, the long popular struggle against injustice, foreign intervention and authoritarian rule began even before martial law was imposed. During martial rule pressure politics in the parliament of the streets played decisive roles in encouraging the people's will to resist, both in the cities and the countryside. It was an endeavor of great price. Popularist systems became massive and the march to freedom more determined after the assassination of Senator Benigno Aquino on the 21st of August, 1983.

The popular revolution of February 1986 was an unarmed resistance of the people in defense of their candidate's victory in an election where the people's vigilant participation was opposed by massive fraud and terrorism, in defiance of the dictatorship and in pursuit of the task of dismantling authoritarian structures.

The decisive factors in this popular revolution were the power of the people, the power of faith and the unwavering leadership of Corazon Aquino who led a nonviolent protest campaign and resolutely resisted U.S. pressures for accommodation and compromise.

Two significant factors sustained and strengthened the defense of the people's unarmed resistance.

The Catholic Bishops Conference postelection statement, with which other faiths, Christian and non-Christian alike, concurred, affirmed that the Marcos government no longer had any "moral basis," indicated the path of "nonviolent struggle for justice," and thereby galvanized the collective courage of the people and placed the power of faith at their service.

The Reform the Armed Forces Movement, by the rebellion it initiated from within the military, paralyzed the repressive forces of the regime and led to the recognition of the sovereign will of the people — a people who without arms defended an initially besieged Reform the Armed Forces Movement and later demoralized and disarmed the assault troops of the discredited Marcos regime.

The popular revolution, therefore, involved the seizure of state power by the people; it was essentially a political act, extraconstitutional, metalegal, nevertheless, legitimate and real.

Allow me to conclude, therefore, that the basis for the legitimacy of the present government in the final analysis is the sovereign will of the Filipino people, expressed in the most direct and unique manner. The power of the people put an end to dictatorial rule. People mobilized in a militant manner and rose up unarmed in a unique Filipino way. For this reason, I support Section 7.

THE PRESIDING OFFICER (Mr. Tingson): Commissioner Garcia took five minutes.

MR. CALDERON: I request that Commissioner Colayco be recognized.

THE PRESIDING OFFICER (Mr. Tingson): Commissioner Colayco is recognized.

MR. COLAYCO: Thank you, Mr. Presiding Officer.

The basic issue everybody knows is whether President Aquino was the elected, legitimately chosen President in the February 1986 elections. The NAMFREL tallies have shown this, the family of nations has acknowledged this, the hundreds and thousands of Filipinos who flocked to EDSA and waited for more than four days risking their lives have recognized this. Minister Enrile and General Ramos recognized this. Nay, even Commissioner Maambong and Commissioner Ople have admitted this. Everybody also knows that the elections were rigged by

Mr. Marcos and that they were marked by violence and mass fraud and this was verified by representatives from all corners of the world. Even Mr. Tolentino was aware of this because he must have been very embarrassed about what had happened because he did not even bother to go to Malacañang, to take his oath. When he was asked by the reporters the reason why he did not go to Malacañang his cryptic answer was, "there are times when one must talk and other times when one must be silent."

One point which we must emphasize is this: The election, the choice of President Aquino, was under the aegis of the 1973 Constitution. So, even if technically — as some of our friends claim and is apparently recognized by President Aquino herself — her government is revolutionary; it cannot be denied that her election was legitimate and constitutional.

Now, it has been asked: How can we consider her the constitutional President when she herself has admitted that her mandate is revolutionary? This may have been said by a President, by a person who is not trained in law. At any rate, if this was a mistake, can this bind her? Can she be bound by what really took place, by the fact admitted by everyone that she was really the chosen President and elected in the 1986 elections? So, everybody admits that she is the duly elected President. So, why make her run again?

Everybody was of the same opinion as what Commissioner Maambong said in all his public hearings — I hope I am not misquoting him — that "no one in his right senses would dare to run against President Aquino now." But then he says, "Why not give the people a chance to voice their decision?" I think the question should be, "Why make her run at all, if anyway nobody can beat her?" Besides, who are we trying to convince? The Marcos mercenaries who call themselves "loyalists"? It would be an unnecessary expense of money and time to make her go through the motions of running again.

The claim has always been said, "We were not elected." Does that make us illegitimate Commissioners also? The 12 out of the 13 state assemblies in the United States appointed the more than 60 delegates to frame the Constitution. Nobody questioned the legitimacy of their appointment. Again it is said, is it not unseemly that we should legitimize or mandate in the Constitution that she is the legitimately elected President? What will the people say? We must go back to the first question: Is she or is she not the legitimately elected President? If she is, must we go out of our way, commit mental or even moral dishonesty simply because we want to show that we are beholden to her? I think the practicalities of the case require and justify that this body who, according to Commissioner Maambong, is legitimately authorized and competent declare her the duly elected President of the Philippines. We must do our duty notwithstanding what the loyalists may say because otherwise, we will not be following our own conscience because we know that she is really the elected President.

I thank you.

THE PRESIDING OFFICER (Mr. Tingson): Commissioner Colayco took six minutes and 45 seconds.

MR. CALDERON: Mr. Presiding Officer, I request that Commissioner Sarmiento be recognized.

THE PRESIDING OFFICER (Mr. Tingson): Commissioner Sarmiento is recognized.

MR. SARMIENTO: Mr. Presiding Officer, it is argued inside and outside of this august body that this Commission could not give the incumbent President and Vice-President fixed term without violating the constitutional principles of democracy and republicanism; that if this Commission would give the incumbents fixed term, we would constitutionalize a revolution without benefit of election; that it would be immoral if this Commission whose Members are appointees of President Aquino define the incumbents' term of office; that this Commission's independence would suffer if it settles the term; that the legal, moral and practical step is to require the incumbent President and Vice-President to submit to a new election; that to restore normalcy and stability in

this country, a presidential election is logically the best means to achieving them.

Mr. Presiding Officer, the arguments for a snap presidential election are bankrupt. The primary and sacred task of a Constitutional Commission whether appointed or elected is to frame without fear or favor a document that will stabilize and enhance a country's political, social and economic order. To achieve that end, that Commission has the blanket authority, the plenary power to place in that document mechanisms, structures, models and designs that would ensure the country's enduring peace and progress. This was done by the Philadelphia Constitutional Convention of 1787 when, through its 40 active but appointed deputies, it created in the American Constitution a blueprint of government that is still durable after 200 years and resolve in it complex issues about equality and representation of the states' slavery and political equality. The framers of our 1935 Constitution, not lacking in wisdom and foresight, likewise devised formulas and institutions in order to achieve national stability and prosperity. This Commission, although appointed, can do no less. This Commission, following the examples of its forbears, can contrive formulas in order to accomplish lasting reforms and enduring stability in our country. One such formula is the fixing of the term of the incumbent President and Vice-President. We will just be doing what is morally and legally correct under the circumstances by adopting that formula and thereby pave the way for the creation of a constitution that will be a document of authentic political, social and economic stability.

We always say that the Constitution should be a shrine reflecting the yearnings and aspirations of our people, an altar expressing their hopes and fears. If you ask me what is one of these yearnings, it is that President Aquino should be given a six-year term in the Constitution so that she can finish her program of rebuilding this nation after years of systematic plunder. If you ask me, what is this fear? It is that this country shall not, God forbid, be in the hands of another President, a Marcos in disguise, a wolf in sheep's clothing who will seek to restore what was despotic, iniquitous and unjust in the past.

Mr. Presiding Officer, I cannot be mistaken that contrary to what others say, the most moral, legal and practical thing we can do now is to enshrine in our Constitution a provision fixing the term of the incumbent President and Vice-President. In so doing, we respect with reverence the people's sovereign will expressed through the ballot during the last presidential elections and through the unusual events of February 1986. Yes, Mr. Presiding Officer, vox populi vox Dei cannot be immoral; it cannot be illegal. It is wisdom; it is constitutional.

Thank you, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Tingson): Commissioner Sarmiento took five minutes, 25 seconds.

MR. CALDERON: Mr. Presiding Officer, I request that Commissioner de Castro be recognized.

THE PRESIDING OFFICER (Mr. Tingson): Commissioner de Castro is recognized.

MR. DE CASTRO: Thank you, Mr. Presiding Officer.

I rise to defend my Resolution No. 120 that Madam Corazon C. Aquino and Mr. Salvador Laurel are the duly elected President and Vice-President, respectively, of the Republic of the Philippines during the elections of February 7, 1986 and they shall serve as such for six years starting February 25, 1986 based on the following:

During the snap elections of February 7, 1986, they were clearly voted upon by the great majority of the Filipino people. I do not like to belabor here the EDSA miracle of February 22-25, 1986. We were there and we know what happened, who participated therein, how it happened and why it happened. Millions of Filipinos were there to, include you and I, not to protect the persons of Minister Enrile and General Ramos from harm; we were there to declare to the whole Filipino people and the whole world that Madam Corazon C. Aquino and Mr. Salvador Laurel were the duly elected President and Vice-President, respectively, of this republic. We were there to

denounce to the whole Filipino nation and the whole world the widespread and fraudulent cheatings, useless killings and stealings of Filipino blood committed by the deposed regime. We were there to tell the whole world that at last we are free from the tentacles of an inglorious regime; that at last we have a President and Vice-President truly elected by our people. That soon after Madam Corazon C. Aquino took over the presidency and she was poised to abolish the Batasang Pambansa, we read in the newspapers — and I have reason to believe this based on reliable sources — that the KBL leadership offered to proclaim Madam Aquino and Mr. Laurel as President and Vice-President, respectively, in accordance with the 1973 Constitution provided that the Batasang Pambansa shall not be abolished. If President Aquino agreed, she would then be proclaimed President and Mr. Laurel, Vice-President. And if she was proclaimed, will this be enough, will this be legitimate enough for those who oppose Section 7 that they will not anymore question the legitimacy of their position now?

Mr. Presiding Officer, our Supreme Court, in *Lawyer's League for a Better Philippines vs. President Corazon C. Aquino, et al.*, GR No. 73748, in *People's Crusade for Supremacy of the Constitution, et al. vs. Mrs. Corazon Aquino, et al.*, GR No. 73972, and in *Councilor Chifton U. Ganay vs. Corazon Aquino, et al.*, GR No. 73990, aptly ruled and I quote:

The legitimacy of the Aquino government is not a justiciable matter. It belongs to the realm of politics where only the people of the Philippines shall be judge and the people of the Philippines have made the judgment.

They have accepted the government of President Corazon C. Aquino which is in effective control of the entire country so that it is not merely a de facto government but it is in fact and law a de jure government. Moreover, the community of nations has recognized the legitimacy of the present government. All the 11 members of the court as reorganized have sworn to uphold the fundamental law of the Republic of the Philippines under her government.

If we are to accept the opposition's offer that there should be an election for President and Vice-President, what will prevent Mr. Marcos to be a presidential candidate? He is qualified under Section 2 of our Article on the Executive. He then may insist to come back to campaign and if he will not be allowed to come back to campaign, he can question the legality of such an election; if he questions that, will that election be legitimate because he failed to come back and campaign? If, on the other hand, my friends, he is allowed to come back to campaign for his candidacy, we shall have a revolution in our hands. The AFP may be divided as there are still loyalists in the ranks. Marcos can use all his illegal wealth to completely destabilize and destroy our government, the government which is now fighting for its life due to the plunder and destruction brought by the deposed regime.

My friends, please think of our country. Let us be true Filipinos. We cannot at this time throw our country to untold chaos and eventual disintegration.

Thank you, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Tingson): Commissioner de Castro took seven minutes and 11 seconds.

MR. CALDERON: Mr. Presiding Officer, I request that Commissioner Nollado be recognized.

THE PRESIDING OFFICER (Mr. Tingson): Commissioner Nollado is recognized.

MR. NOLLEDO: Thank you, Mr. Presiding Officer.

I rise to wholeheartedly support the committee report on the term of our incumbent President and Vice-President.

First of all, the nation held a snap election for President and Vice-President on February 7, 1986. That election was characterized by fraudulence, the nature and scope of which were unparalleled in human history. It was the most viciously dishonest election in our country.

What satanic acts took place during that election? They were: snatching of ballot boxes, substitution of ballot boxes, use of false ballots, falsification of ballots and certificates of election returns, disenfranchisement of voters by juggling the lists of registered voters, registration of flying voters, use of terrorism to prevent the electorate from casting their votes, intimidations and violent acts designed to drive away volunteers for free and clean elections, and many other devilish ways that could be resorted to only by a man desperately holding to power, like a mindless lizard, in the face of an overwhelming demand by the people for a change in the presidency.

Money from the National Treasury flowed like honey into the wide pockets of public officials and politicians whose allegiance and loyalty were pledged to those who were willing to share the fruits of grand larceny of the people's funds and resources.

And what were the bases of the so-called proclamation of the false victors by the rubber-stamp National Assembly? They were certificates of election returns, most of which had spurious appearances, erasures, intercalations, absence of signatures, broken seals, and many more. The promise of the then Speaker to hear the beleaguered opposition Members of the legislature on those adulterated certificates before the proclamation proceeds was not fulfilled for railroading was part of the orchestrated plan to forthwith proclaim the illegitimate winners.

And why the agonizing delay in the counting of votes, when previous elections and referenda would need only two or three days to complete the counting of more than 20 million votes?

And where were the members of the Commission on Elections at that time, when the commission suddenly converted itself into a one-man body of Opinion, deceitly interpolating the results of the election?

Could you imagine the then incumbent President claiming on television and before the press that nuns of the Roman Catholic Church were seen snatching ballot boxes, when what the nuns actually did was to embrace these ballot boxes to prevent them from being stolen by barbarians hired to suppress the people's will? Such claims could come only from an inveterate liar.

Mr. Presiding Officer, all these frauds, deceits, falsehood, misrepresentations, terrorism and lies were patently made before the eyes of our people, before my own eyes, before the eyes of foreign observers, and before the whole world.

Cory Aquino and Doy Laurel were victims of these electoral frauds, deceits, intimidations and violence. Cory and Doy were cheated in that February 7 election. Even small children know these. The entire Batasang Pambansa, which wrongly proclaimed Marcos and Tolentino, knew these. In fact, many Members of this legislative body manifested their desire to correct their mistake on condition that Cory would retain the Assembly. In other words, everyone knows who won in that February 7 election.

When Mr. Felipe refused to answer Commissioner Ople's question as to who won the election of February 7, 1986, he was just being courteous to Commissioner Ople because the answer was obvious. I understand that in private conversations, Mr. Felipe affirmed the victory of Cory and Doy. Besides, Mr. Felipe was, in effect, junked by the COMELEC during the actual canvassing of votes. It was Mr. Opinion, who was not even a chairman of the Commission on Elections, who was speaking for the COMELEC.

Therefore, for the Suarez committee to recognize the victory of Cory and Doy is to manifest justice in its highest order. It is the most moral thing to do, and anyone who says that the committee report is immoral, particularly Arturo Tolentino, whose legal brilliance has lost its light to illumine the people, is to be guilty of political blackmail because of the gratuitous claim that the people would not ratify this Constitution should the Suarez report be favorably acted upon.

Mr. Presiding Officer, the proximate assumption to office of Cory and Doy was their victory in the February 7 election. Their ascendancy to office was made possible by the most dramatic episode in Philippine history, the so-called "greatest democracy" manifested by people from all walks of life, about almost three million of them, under the beautiful skies of our republic in the now historic Epifanio de los Santos Avenue, under the guiding hand of God and with the sweetest and most loving intercession of Mary, our Blessed Mother.

Mr. Presiding Officer, I actually participated in the beautiful drama that unfolded at EDSA. My son, Michael, now an Inter-Med student at the University of the Philippines and who had just then recovered from sickness and could hardly walk, and myself could not resist the call by Cardinal Sin for reinforcement of the people's power at EDSA. I saw Senator Francisco "Soc" Rodrigo there. My heart jumped with joy when I saw my students at Ateneo Law School proudly marching on the street with LABAN signs.

They were led by Mark Laurel, Joey Benedicto, Dodie Colayco and Perry Maldia. I saw images of the Lady of Fatima and big crucifixes with the agonizing Jesus being carried on station wagons and when the night came, the people focused their flashlights on these images and crucifixes for Marcos' soldiers to see while people were shouting to soldiers aboard big tanks "sama na kayo, sama na kayo." I could see Roman Catholics bringing Bibles and praying the rosary. My son and I helped others push back the tanks to no avail. We even helped Colonel Mariano Santiago carry big rocks to form barricades. I even told my son to go home and be safe. I said to him that I was old and I had done many things for our country and, therefore, I would not mind losing my life at EDSA. But my son said that dying for one's country in that EDSA revolution would be enough accomplishment for him.

People were shouting "Cory, Cory, Cory" and they were chanting "Cory Aquino, bagong Pangulo, bagong Pangulo si Cory Aquino." Placards were everywhere, proclaiming Cory and Doy as winners in the February 7 election. Minister Ponce Enrile and General Ramos kept on saying over Radio Veritas that Cory and Doy won the election. Enrile said, "Sundin natin ang tinig ng bayan!" The people have spoken, he said, and the people's voice must be heard, he emphatically stated. Why do I say these things, Mr. Presiding Officer? It is because I feel and I now publicly affirm that the EDSA revolution was the means by which the victory of Cory and Doy could be transformed into reality. It was the immediate cause of their lawful ascendancy to office.

The setting up of the revolutionary form of government was, to my mind, most appropriate to enable Cory and Doy to dismantle the illegal and unwanted institutions implanted by Marcos to perpetuate himself in power. The Marcos regime had left on its wake economic turmoil, a bankrupt treasury, a graft-ridden government, a self-centered Constitution and huge foreign indebtedness. There is, indeed, an urgent need to recover hidden and ill-gotten wealth freed from obstructions bordering on plain legalism.

To summarize, Mr. Presiding Officer: The proximate cause of the assumption to office by Cory and Doy was their victory in the February 7 election, denied them by the use of Marcos and his collaborators of electoral frauds and deceptions. The immediate cause of ascendancy to office of Cory and Doy was the EDSA revolution which was the people's way of enabling Cory and Doy to realize their rightful claim to the offices of President and Vice-President.

In answer to the demand that the people be given a chance to elect their President and Vice-President, I say that the people were already given that chance in the last February 7 election. In fact, that chance was suppressed by frauds and deceptions and despite these, NAMFREL made a report, albeit unofficial, that Cory and Doy won the election. The Suarez report on the term of Cory and Doy should be seen as a vindication of the people's will as truly expressed in the February 7 election.

For us to require a new election for Cory and Doy or to ask the people in a separate question whether they would favor the Suarez report would be sheer hypocrisy and an unpardonable redundancy. And to say that a new

presidential election will unite this country is plain mediocrity.

I believe that Cory is God's cherished gift to the Filipino people at the time of our struggle for emancipation from the repressive regime of the Marcoses. For us to burden that gift with new elections or separate referendum would be pure heresy.

Lastly, Mr. Presiding Officer, it occurs to me that if the reported coup d'etat by Mr. Enrile and his group were successful, we would have a military junta to run this government; it could be a military dictatorship. With the assumption of Cory and Doy through people's power in a different milieu which God, I believe, so willed, we regained our freedom and democracy is once more restored in our beloved country. Let that democracy be nourished and invigorated under the stewardship of Cory and Doy.

Thank you, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Tingson). Commissioner Nollado consumed 10 minutes and 16 seconds.

MR. CALDERON: Mr. Presiding Officer, I request that Commissioner Villacorta be recognized and after Commissioner Villacorta, hopefully the last speaker will be Commissioner Padilla.

THE PRESIDING OFFICER (Mr. Tingson): Commissioner Villacorta is recognized.

MR. VILLACORTA: Mr. Presiding Officer, I would like to support Section 7, fixing the term of office of the President and Vice-President for six years starting at noon of February 25, 1986 until noon of February 25, 1992. As held by the Supreme Court in three cases, namely, GR Nos. L-73748, 73972 and 73990, the people, and I quote:

. . . have accepted the government of President Aquino which is in effective control of the entire country so that it is not merely a de facto government but is in fact and law a de jure government.

As Commissioner de Castro mentioned after the establishment of the said government in February 1986:

. . . members of the family of nations including the major powers recognize this government, thereby confirming its legitimacy and existence.

Added to this was the reception given by members of the General Assembly of the United Nations to President Aquino when she addressed the body in September 1986.

Mr. Presiding Officer, as pointed out in the committee chairman's sponsorship speech, there is a consensus to affirm the six-year term of the incumbent as in fact she ran for election for said term. Our Constitutional Commission has indeed the prerogative to confirm the term of the incumbent because as the constitutionalist of the Marcos era, Justice Fernando, has correctly said:

A constitutional convention is a coordinate body with the main departments of the government entrusted with the duty of drafting a Constitution or revising and amending an existing Constitution for the approval by the electorate. In performing such a function, it has full powers; it is not subject to restraint by the legislature or the courts either as to what subject or subjects may be taken up or may be proposed. Only the people, more specifically those enjoying the right to vote, can set aside the action taken.

Under the plenary power of this Constitutional Commission, it can make or propose such provision on the term of office of the incumbent President and Vice-President. The important thing is that it is presented to the people and if the latter ratify or approve the same, the legality of the provision becomes beyond question as sovereignty resides in the people.

Thank you very much, Mr. Presiding Officer.

THE PRESIDING OFFICER. (Mr. Tingson): Commissioner Villacorta has talked for four minutes.

MR. CALDERON: Mr. Presiding Officer, the last speaker hopefully will be Commissioner Padilla.

THE PRESIDING OFFICER (Mr. Tingson): The Vice-President, Commissioner Padilla, is recognized.

MR. PADILLA: Thank you.

Section 7 of the committee report recognizes the term of six years. This is fully justified by the fact that the snap presidential elections of February 7 was for that period of six years. The deposed President decided to call for a snap election and the Batasang Pambansa agreed by enacting a law therefor. Several petitions were filed with the Supreme Court stating that the snap election may be illegal because there was no vacancy in the office of the President as President Cargos refused to resign. I recall the hearings before the Supreme Court. I appeared as one of the amicus curiae and I stated that there is no issue more political than national elections, especially presidential elections. If the executive and the legislative have decided to hold such a snap election, the judiciary should not interfere or prevent such election. The Supreme Court correctly held that the issue was political and not justiciable. And so the elections were held.

I am not going to repeat what others have said, but the fact is that despite massive vote-buying, irregularities, terrorism, frauds, and so forth, the obvious result of the February 7 snap election was the clear choice of the sovereign people by electing now incumbent President Aquino and Vice-President Laurel. However, the Batasang Pambansa issued its proclamation rather arbitrarily and fraudulently, disregarding the verdict of the Filipino people.

Mr. Presiding Officer, the peaceful revolution of February 22-25 was in support of the election of the incumbent President and Vice-President. That was not for Minister Enrile or even Chief of Staff Ramos. It was the people supporting the election of February 7. And so this government is not de facto. It is de jure for its legitimacy is beyond doubt. This Constitutional Commission expressly recognizes the legitimacy of the Aquino government. As so already stated, the entire world community recognizes the legitimacy of this government. Why then, Mr. Presiding Officer, shall the slightest doubt on such legitimacy be cast by the Commission?

I, therefore, fully support Section 7 of the committee report.

Thank you.

THE PRESIDING OFFICER (Mr. Tingson): Commissioner Padilla has consumed four minutes and 21 seconds.

MR. CALDERON: Mr. Presiding Officer, we now proceed to the period of amendments.

THE PRESIDING OFFICER (Mr. Tingson): Is there any objection? (Silence) The Chair hears none; the motion is approved.

MR. OPLE: Mr. Presiding Officer, may I propose an amendment by substitution of Section 7?

THE PRESIDING OFFICER (Mr. Tingson): Commissioner Ople is recognized.

MR. OPLE: The text of this amendment has been circulated to all the Members of the Commission. May I read it for the guidance of all? "SECTION 7. WITHIN ONE HUNDRED TWENTY DAYS FROM THE RATIFICATION OF THIS CONSTITUTION, THE INCUMBENT PRESIDENT SHALL CALL ELECTIONS FOR PRESIDENT AND VICE-PRESIDENT WHICH MAY BE SIMULTANEOUS WITH THE ELECTION FOR MEMBERS OF CONGRESS ON MAY 11, 1987.

May I seek the committee's kind consideration of this proposed amendment?

THE PRESIDING OFFICER (Mr. Tingson): What does the committee say?

MR. SUAREZ: We would rather, Mr. Presiding Officer, that we submit this to the wisdom of the Commissioners.

MR. OPLE: May I call for a vote, Mr. Presiding Officer?

THE PRESIDING OFFICER (Mr. Tingson): Mr. Floor Leader, are we ready for a vote?

MR. RAMA: We are ready for a vote.

MR. JAMIR: Mr. Presiding Officer. I am the Acting Floor Leader and the House is ready to vote.

VOTING

THE PRESIDING OFFICER (Mr. Tingson): As many as are in favor, please raise their hand. (Few Members raised their hand.)

As many as are against, please raise their hand. (Several Members raised their hand.)

As many as are abstaining, please raise their hand (One Member raised his hand.)

The results show 4 votes in favor, 35 against and 1 abstention; the amendment is lost.

MR. DAVIDE: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Tingson): Commissioner Davide is recognized.

MR. DAVIDE: For historical record, may we know the vote of the Presiding Officer?

THE PRESIDING OFFICER (Mr. Tingson): For historical record, I am happy to state that I voted against the amendment.

MR. RAMA: Mr. Presiding Officer, I ask that Commissioner Monsod be recognized for another amendment.

THE PRESIDING OFFICER (Mr. Tingson): Commissioner Monsod is recognized.

MR. LAUREL: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Tingson): Commissioner Laurel is recognized.

MR. LAUREL: I was recorded as having voted in favor of the amendment of Commissioner Ople. But I would rather withdraw that vote in favor because although there is no doubt whatsoever in my mind in the same way that there is no doubt among the nations of the world that the wife of our new national hero, Ninoy Aquino, is the only President of the only Republic of the Philippines, I happen to be — and, therefore, I should vote yes — the brother of Doy Laurel, who is not afraid of any election. Talagang ganyan ang pulitiko. Doy Laurel happens to be my brother and, therefore, I find myself compelled to abstain.

THE PRESIDING OFFICER (Mr. Tingson): So, the official results of the voting show 4 votes in favor, 34 against and 2 abstentions; the amendment is lost.

MR. RAMA: Commissioner Monsod would like to be recognized.

THE PRESIDING OFFICER (Mr. Tingson): Commissioner Monsod is recognized.

MR. MAAMBONG: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Tingson): What is the pleasure of Commissioner Maambong?

MR. MAAMBONG: With the indulgence of Commissioner Monsod, there was a prior amendment submitted to the committee and if it is all right with Commissioner Monsod, for proper, orderly procedure we might as well take up the amendment which was submitted ahead. Is that all right with Commissioner Monsod?

MR. MONSOD: I submit, Mr. Presiding Officer.

MR. SUAREZ: It is an alternative amendment or proposal submitted by the Honorable Rustico de los Reyes.

MR. DE LOS REYES: Mr. Presiding Officer, is the Monsod amendment the one containing 23 signatures?

MR. MONSOD: Yes, Mr. Presiding Officer.

MR. SUAREZ: The one containing the signatures of 23 Commissioners.

MR. DE LOS REYES: I will not mind taking this amendment ahead, without prejudice to the introduction of my amendment by addition after "1992."

MR. SUAREZ: Mr. Presiding Officer, point of clarification because the amendment of the Commissioner consists of three paragraphs.

MR. DE LOS REYES: Yes, Mr. Presiding Officer.

MR. SUAREZ: The fourth one is the proposed question. So when we say "in addition to," that is not exactly correct, unless we would consider the phrase after "1992" as addition to Section 7 also.

MR. DE LOS REYES: Then I will go ahead with my amendment. This has been distributed and the amendment reads as follows: "THE INCUMBENT PRESIDENT AND VICE-PRESIDENT SHALL HOLD OFFICE FOR A TERM OF SIX YEARS STARTING AT NOON OF FEBRUARY 25, 1986 UNTIL NOON OF FEBRUARY 25, 1992. "That is the committee proposal.

MR. SUAREZ: Yes.

MR. DE LOS REYES: If only to realign this provision with what we have previously approved and in line with this proposal of several distinguished Commissioners, the following constitutes the major amendment "UNLESS A MAJORITY OF THE AFFIRMATIVE VOTES CAST IN THE PLEBISCITE HELD FOR THE PURPOSE IS FOR THE HOLDING OF AN ELECTION FOR PRESIDENT AND VICE-PRESIDENT SIMULTANEOUSLY WITH MEMBERS OF THE CONGRESS AFTER THE RATIFICATION OF THIS CONSTITUTION. SAID ISSUE SHALL BE SUBMITTED AS A SEPARATE QUESTION DURING THE RATIFICATION OF THIS CONSTITUTION." I have written down the proposed question:

"Do you want President Aquino and Vice-President Laurel to run for election for their respective post on May 11, 1987?

In case an election for said positions is held on the aforementioned date, the term of office of the newly elected President and Vice-President shall commence at noon on June 30, 1987 and shall expire at noon on June 30, 1992. I need not explain because this was already extensively discussed in my speech.

MR. MAAMBONG: Just for the record, Mr. Presiding Officer.

MR. DE LOS REYES: Yes

MR. MAAMBONG: The first amendment which was voted down was an amendment by substitution. Could the Commissioner properly call his amendment an amendment by addition?

MR. DE LOS REYES: I suppose so. That will be the proper nomenclature.

MR. MAAMBONG: Thank you, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Tingson): Is the body ready to vote?

MR. RAMA: Yes, Mr. Presiding Officer, the body is ready to vote.

THE PRESIDING OFFICER (Mr. Tingson): The body has heard the amendment.

As many as are in favor, please raise their hand. (Few Members raised their hand.)

As many as are against, please raise their hand. (Several Members raised their hand.)

As many as are abstaining, please raise their hand. (Three Members raised their hand.)

The results show 4 votes in favor, 32 against and 3 abstentions; the amendment is lost.

What is the pleasure of Commissioner Laurel?

MR. LAUREL: I am abstaining, Mr. Presiding Officer, for the same reason which I gave when I voted on the main resolution.

THE PRESIDING OFFICER (Mr. Tingson): It is so recorded. I think the vote still stands. The Gentleman was counted as having abstained a while ago.

MR. RAMA: Mr. Presiding Officer, I ask that Commissioner Monsod be recognized.

THE PRESIDING OFFICER (Mr. Tingson): Commissioner Monsod is recognized.

MR. MONSOD: Mr. Presiding Officer, I would like to propose an amendment by substitution on Section 7.

THE PRESIDING OFFICER (Mr. Tingson): The Gentleman may proceed.

MR. MONSOD: The amendment reads: "THE TERM OF THE INCUMBENT PRESIDENT AND VICE-PRESIDENT BY VIRTUE OF THEIR ELECTION AND PROCLAMATION BY THE PEOPLE IN THE FEBRUARY 7, 1986 ELECTIONS SHALL BE EXTENDED FOR PURPOSES OF SYNCHRONIZATION OF THE NATIONAL ELECTIONS FROM FEBRUARY 25, 1992 TO NOON OF JUNE 30, 1992."

May I just have two minutes to explain the amendment? This amendment assumes that this body does not need to give a term of six years to the incumbent President and Vice-President because they already have that term that has been given them by a vote of the people. The reason we need to put something in the Article on Transitory Provisions is that the six-year term expires on February 25, 1992. In order to synchronize national elections, they would have to be given an additional four months up to noon of June 30, 1992.

I just want to make one observation, Mr. Presiding Officer. The question has been raised in this Assembly on whether, in fact, there was a duly elected President and Vice-President in the snap elections. I was very much involved in the NAMFREL count. There are about 67,000 precinct tallies duly authenticated by the board of election inspectors that are in the possession of NAMFREL in support of its count. I was very much involved in the submission of those tallies from as far north as Batanes to as far south as Tawi-Tawi and the small islands of Guimaras and Camiguin. This was precious cargo for the 500,000 NAMFREL volunteers, and in defense of the ballot and in defense of the precinct tallies, four NAMFREL volunteers were killed and 160 were injured. This is the price we paid to safeguard the integrity of this election. And we nor the 500,000 volunteers nor the millions of other Filipinos who upheld the integrity of that ballot cannot turn our back by assuming that that election is not relevant to the term of the President and Vice-President.

Mr. Presiding Officer, with that, I would like to ask the committee what their position is on my amendment.

MR. MAAMBONG: Before that, Mr. Presiding Officer, may I just propound one question? When the formulation the Gentleman presented indicates "proclamation by the people," there is an assumption that this "proclamation by the people" is in substitution of the proclamation made by the Batasang Pambansa.

MR. MONSOD: Mr. Presiding Officer, the "proclamation by the people" is the highest form of expression of the sovereign will.

MR. MAAMBONG: Yes, understandably. But the question is that this is actually in substitution of the proclamation made by the Batasang Pambansa.

MR. MONSOD: Yes, Mr. Presiding Officer, it is in the exercise by people of their reserve and sovereign right.

MR. MAAMBONG: Thank you, Mr. Presiding Officer.

MR. SUAREZ: May we just clear up a few more points with the distinguished proponent, Mr. Presiding Officer.

The phrase "BY VIRTUE OF THEIR ELECTION AND PROCLAMATION BY THE PEOPLE IN THE FEBRUARY 7, 1986 ELECTIONS" may cast some more doubt on the situation. Would the Gentleman have any objection if we delete this phrase and instead go direct to the point. Between the words "THE" and "INCUMBENT," we insert the word "ELECTED, such that it would read: "THE TERM OF THE ELECTED INCUMBENT PRESIDENT AND VICE-PRESIDENT . . . SHALL BE EXTENDED FOR PURPOSES OF SYNCHRONIZATION OF THE NATIONAL ELECTIONS FROM FEBRUARY 25, 1992 to NOON OF JUNE 30, 1992."

We go direct to the point.

MR. MONSOD: I accept, Mr. Presiding Officer.

MR. SUAREZ: The committee accepts the proposed amendment.

MR. MAAMBONG: Just one point on that line. Is it necessary that the formulation should indicate that the term of office of the incumbent is extended, or would it be better to just formulate something to indicate that they are in holdover capacity up to June 30, 1992? Which would be better — to extend the term or put in the provision that they are in holdover capacity?

MR. MONSOD: Mr. Presiding Officer, I think we prefer the extension because that is within the plenary power of this Commission, in the interest of synchronization of national elections; otherwise, the incumbents do not have that additional four months. We did the same, in essence, when we gave the elected Senators, Congressmen and local government officials five years up to 1992, although their regular term is three years.

MR. MAAMBONG: That is precisely my point, because I feel that there might be some legal impediment for us to give a term. But if we say that they are in holdover capacity, the impediment which I perceive to exist might not be availing. But the opinion of the Gentleman is that it would be better to give them a term rather than say that they would be on holdover capacity for purposes of synchronization.

MR. MONSOD: Yes, Mr. Presiding Officer, we would prefer that.

MR. MAAMBONG: Thank you.

MR. BENGZON: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Tingson): Commissioner Bengzon is recognized.

MR. BENGZON: This Commission is not giving a term to the President because the term of the President has

been fixed for six years when she was elected.

MR. MONSOD: That is the position of this Representation. If the Gentleman will notice, at the beginning I said that we are not giving the incumbent President and Vice-President a six-year term because they already have that. What we are only doing is synchronizing the national elections, and in so doing, their term has to be extended by four months.

MR. MAAMBONG: Commissioner Bengzon did not get very well the discussion between Commissioner Monsod and myself. We were talking of the term of four months or so from the time of the lapse of six years.

MR. BENGZON: Therefore, that assumes the fixed term of six years.

MR. MAAMBONG: The formulation itself assumes a period of six years; although others may disagree on that, that is the formulation. There is an assumption of six years. We are discussing the four months after the lapse of the six-year term.

MR. DE LOS REYES: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Tingson): Commissioner de los Reyes is recognized.

MR. DE LOS REYES: Will Commissioner Monsod yield to a few questions?

MR. MONSOD: Gladly, Mr. Presiding Officer.

MR. DE LOS REYES: In proposing this amendment, did the Commissioner take into consideration the provisions of Section 2 of B.P. Blg. 883, entitled: "AN ACT CALLING A SPECIAL ELECTION FOR PRESIDENT AND VICE-PRESIDENT, PROVIDING FOR THE MANNER OF THE HOLDING THEREOF, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES"? or is this batas pambansa completely disregarded in the amendment of the Gentleman?

MR. MONSOD: What particular part of it is the Gentleman referring to?

MR. DE LOS REYES: Section 2, which refers to the direct vote and term of office of the President and Vice-President.

MR. MONSOD: Will the Gentleman read it. I do not have a copy of it.

MR. DE LOS REYES: The provision reads:

The President and the Vice-President shall be elected by direct vote of the people for a term of six years which shall begin at noon on the tenth day following their proclamation and shall end at noon on the thirteenth day of June of the sixth year thereafter.

That is the provision of B.P. Blg. 883. Therefore, if we follow this batas pambansa, there is no need to justify the extension or the holdover as being proposed by Commissioner Maambong because it is so stated already in B.P. Blg. 883.

MR. MONSOD: Yes, the reason is that we wanted to avoid any doubts as to the term so we are mentioning it here. We are amenable to a formulation that recognizes the term up to June 30, if the Gentleman wishes. I think Commissioner Davide has a formulation there.

MR. MAAMBONG: Is it the position of the proponent, therefore, that this formulation is only in reiteration of what is already contained in the law — just to be sure? Is that the position of the proponent?

MR. MONSOD: Yes, Mr. Presiding Officer.

MR. MAAMBONG: Thank you.

MR. DAVIDE: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Tingson): Commissioner Davide is recognized.

MR. DAVIDE: May I propose the following amendments: On the first line, after "oath" insert "OFFICE OF," then delete the clause "BE EXTENDED FOR PURPOSES OF SYNCHRONIZATION OF THE NATIONAL ELECTIONS FROM FEBRUARY 25, 1992, TO" and in lieu thereof insert the words "END AT." So it will read: "THE TERM OF OFFICE OF THE INCUMBENT PRESIDENT AND VICE-PRESIDENT ELECTED IN THE FEBRUARY 7, 1986 ELECTIONS SHALL END AT NOON OF JUNE 30, 1992." I propose, however, a new paragraph to read as follows: "THE FIRST ELECTION UNDER THIS CONSTITUTION FOR THE PRESIDENT AND THE VICE-PRESIDENT SHALL BE HELD ON THE SECOND MONDAY OF MAY, 1992." It is still necessary because we deleted "FOR PURPOSES OF SYNCHRONIZATION" so we have to state when the first election for President and Vice-President, who will assume also at the end of the term of the incumbent President and Vice-President which will be at noon of June 30, 1992, will really be.

MR. MONSOD: Is not the presidential election provided in our Constitution?

MR. DAVIDE: No, it is not because as provided under the Article on the Executive, it only states: "as may be provided by law." I am not very sure now, but unlike in the case of the Article on the Legislative, we made it very specific that the election for Members of Congress shall be on the second Monday of May.

MR. MAAMBONG: Could the Gentleman kindly read again the first and second paragraphs of his amendment. The committee did not get it very well.

MR. DAVIDE: The new Section 7 will read as follows: "THE TERM OF OFFICE OF THE INCUMBENT PRESIDENT AND VICE-PRESIDENT ELECTED IN THE FEBRUARY 7, 1986 ELECTION SHALL END AT NOON OF JUNE 30, 1992."

The second paragraph reads: "THE FIRST ELECTION UNDER THIS CONSTITUTION FOR THE PRESIDENT AND THE VICE-PRESIDENT SHALL BE HELD ON THE SECOND MONDAY OF MAY, 1992."

MR. MONSOD: While there is no specific provision — I am looking at the section now — Section 4 of the Article on the Executive does mention only the start of the term of the President which is June 30, next following the day of the election.

MR. DAVIDE: That is exactly the reason why the second paragraph is necessary. We fix now the date of the first election for President and Vice-President.

SUSPENSION OF SESSION

MR. MONSOD: May we have a suspension of the session because I think we do not need to provide for this in the Transitory Provisions.

THE PRESIDING OFFICER (Mr. Tingson): The session is suspended.

It was 8:14 p.m.

RESUMPTION OF SESSION

At 8:16 p.m., the session was resumed.

THE PRESIDING OFFICER (Mr. Tingson): The session is resumed.

Commissioner Davide is recognized.

MR. DAVIDE: Thank you, Mr. Presiding Officer.

I will not insist on the second paragraph in view of the clear understanding that despite the absence of a specific day of an election in the Article on the Executive, it would mean to be an election on the second Monday of May. So, Section 7 will only read as follows: "THE TERM OF OFFICE OF THE INCUMBENT PRESIDENT AND VICE-PRESIDENT ELECTED IN THE FEBRUARY 7, 1986 ELECTIONS SHALL END AT NOON OF JUNE 30, 1992."

THE PRESIDING OFFICER (Mr. Tingson): What does the committee say?

MR. MONSOD: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Tingson): Commissioner Monsod is recognized.

MR. MONSOD: We have some problems with that because the term of the President is six years and there might be a gap in the formulation if we do not recognize that in effect there are two parts here: a six-year term and a four-month extension of the term.

THE PRESIDING OFFICER (Mr. Tingson): Does the Gentleman need a suspension of the session?

MR. MONSOD: Yes, Mr. Presiding Officer.

SUSPENSION OF SESSION

THE PRESIDING OFFICER (Mr. Tingson): The session is suspended.

It was 8:19 p.m.

RESUMPTION OF SESSION

At 8:27 p.m., the session was resumed.

THE PRESIDING OFFICER (Mr. Tingson): The session is resumed.

Commissioner Monsod is recognized.

MR. MONSOD: Mr. Presiding Officer, we have agreed on the text of the amended section and I would like to request the chairman of the committee to read it.

THE PRESIDING OFFICER (Mr. Tingson): Commissioner Suarez is recognized.

MR. SUAREZ: Thank you, Mr. Presiding Officer.

As recast, Section 7 would now read: "THE SIX-YEAR TERM OF THE OFFICE OF THE INCUMBENT PRESIDENT AND VICE-PRESIDENT ELECTED IN THE FEBRUARY 7, 1986 ELECTION IS, FOR PURPOSES OF SYNCHRONIZATION OF ELECTIONS, HEREBY EXTENDED TO NOON OF JUNE 30, 1992."

MR. RAMA: We are ready to vote, Mr. Presiding Officer.

MR. GUINGONA: I accept, Mr. Presiding Officer. May I propose an amendment: "THE SIX-YEAR TERM OF THE OFFICE OF THE INCUMBENT PRESIDENT AND VICE-PRESIDENT SHALL END ON FEBRUARY 25, 1992. THEN IT SHALL BE EXTENDED FOR PURPOSES OF SYNCHRONIZATION OF THE NATIONAL ELECTIONS TO NOON OF JUNE 30." In other words, my proposed amendment would constitutionalize the six-year term.

We refer first to the six-year term, then talk about the extension later, because there is no reference here about the term of the President which we originally had in the committee proposal.

MR. SUAREZ: No, that is the beginning sentence which reads: "THE SIX-YEAR TERM OF THE INCUMBENT PRESIDENT AND VICE-PRESIDENT ELECTED IN THE FEBRUARY 7, 1986 ELECTIONS . . ."

MR. GUINGONA: As long as the manifestation made by Commissioner Monsod clearly signifies that we are recognizing, first of all, the six-year term of the President and Vice-President, then I am willing to withdraw.

MR. MONSOD: Mr. Presiding Officer, I also want to state for the record that when we say "incumbent President and Vice-President," we are referring to President Corazon C. Aquino and Vice-President Salvador Laurel.

MR. OPLE: Before we vote, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Tingson): Commissioner Ople is recognized.

MR. OPLE: May I just put on record the position of Commissioners Maambong, Natividad, de los Reyes and myself that in adjudicating the issue of the February 7, 1986 elections in this provision, we are acting on a very unsure and questionable basis. Having said that, I think I will not stand in the way of the expeditious settlement of this provision.

Thank you.

MR. BENGZON: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Tingson): Commissioner Bengzon is recognized.

MR. BENGZON: I just want to inquire from the proponent and the committee as to the intent of this particular provision. Will this not adversely affect or infect the revolutionary character of the government and the incumbent President and Vice-President in the sense that they were installed by the revolution and in the sense that the 1973 Constitution was selectively repudiated?

MR. MONSOD: That is not really necessary because I believe the arguments have all been said and we feel that there would not have been this revolution had there been no election. Besides the installation, while separate from the election, was part of a continuous process.

MR. BENGZON: We are ready to vote.

THE PRESIDING OFFICER (Mr. Tingson): We are ready to vote. Will the Chairman please state the amended formulation?

MR. SUAREZ: This is the formulated Section 7: "THE SIX-YEAR TERM OF THE INCUMBENT PRESIDENT AND VICE-PRESIDENT ELECTED IN THE FEBRUARY 7, 1986 ELECTIONS IS, FOR PURPOSES OF SYNCHRONIZATION OF ELECTIONS, HEREBY EXTENDED TO NOON OF JUNE 30, 1992."

VOTING

THE PRESIDING OFFICER (Mr. Tingson): As many as are in favor, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (Few Members raised their hand.)

As many as are abstaining, please raise their hand. (Two Members raised their hand.)

The results show 34 votes in favor, 4 against and 2 abstentions; the amendment is approved.

MR. MONSOD: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Tingson): Commissioner Monsod is recognized.

MR. MONSOD: For purposes of the record may we submit the list of coauthors of the amendment to the Secretariat?

MR. SUAREZ: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Tingson): Commissioner Suarez is recognized.

MR. SUAREZ: Thank you.

May we take this opportunity to express the committee's appreciation for the amiable way the sensitive matter has been decided by the Commissioners.

THE PRESIDING OFFICER (Mr. Tingson): Commissioner Bengzon is recognized.

MR. BENGZON: Mr. Presiding Officer, one of the reasons we must finish this Constitution on October 15 is that we already have an appointment to present it. There are only a few more proposed amendments here, some of which will be kindly withdrawn by Commissioner Davide. So, I move that we recess for the dinner the President has prepared for us then come back and finish off with these other amendments so that tomorrow, we can reopen the Articles on the Legislative, the Judiciary and the Executive which we have just decided now in accordance with the schedule.

MR. SUAREZ: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Tingson): Commissioner Suarez is recognized.

MR. SUAREZ: In behalf of the committee, may we request Commissioners Davide, Concepcion and Tadeo to please discuss their proposed amendments with the committee during the recess. May we also request Commissioner Bernas to join the discussion in connection with the packaging of the ratification of the Constitution.

THE PRESIDING OFFICER (Mr. Tingson): Before we suspend the session, I would like to state that from this elevated position of honor, the temporary chairman took a record. The highest pointer tonight was Commissioner Nollado with 10 minutes and 16 seconds followed by Commissioner de Castro with 7 minutes and 11 seconds; the lowest pointer was Commissioner Rama with 3 minutes.

SUSPENSION OF SESSION

MR. BENGZON: May I move that we suspend the session until 9:30 p.m.

THE PRESIDING OFFICER (Mr. Tingson): The session is suspended until 9:30 p.m.

It was 8:38 p.m.

RESUMPTION OF SESSION

At 9:33 p.m., the session was resumed with the Honorable Adolfo S. Azcuna presiding.

THE PRESIDING OFFICER (Mr. Azcuna): The session is resumed.

The Floor Leader is recognized.

MR. RAMA: Mr. Presiding Officer, I ask that the committee chairman be recognized.

THE PRESIDING OFFICER (Mr. Azcuna): The committee chairman, Commissioner Suarez, is recognized.

MR. SUAREZ: Mr. Presiding Officer, there are a few more sections proposed by the Commissioners.

May we call on the Honorable Davide to find out whether he is pressing the resolution on his three proposed sections.

THE PRESIDING OFFICER (Mr. Azcuna): Commissioner Davide is recognized.

MR. DAVIDE: Thank you, Mr. Presiding Officer.

My proposals, which are contained in Item Nos. 3, 4 and 5 of the list of pending provisions, would unduly prolong the Article on Transitory Provisions. Insofar as Item No. 4 is concerned, taking into account the totality of the proposed new Constitution where we mandated for separate priorities, I am withdrawing said item.

MR. SUAREZ: How about Item No. 3 considering that the reorganization of our government is presently being undertaken by the Presidential Committee on Government Reorganization?

MR. DAVIDE: In view of that, I am also withdrawing Item No. 3.

MR. SUAREZ: Thank you.

MR. MAAMBONG: So, there is only one item which the Commissioner is willing to die for.

MR. DAVIDE: I am willing to die for the third proposal, Item No. 5, but I am also amenable to withdrawing it.

MR. SUAREZ: Thank you, Mr. Presiding Officer.

MR. DAVIDE: We now call on Commissioner Tadeo. He has manifested to us that he would not press the other proposed section.

THE PRESIDING OFFICER (Mr. Azcuna): The Honorable Tadeo is recognized.

MR. TADEO: Mr. Presiding Officer, gusto ko lamang ipaliwanag ang aking proposed section. It is common knowledge that many government officials before and during the Marcos era have been able to take advantage of their positions and clout to acquire all types of real estate properties from agricultural to plush residences and high-priced buildings through grossly illegal and fraudulent means. The manner of their acquisition is proved to have been unjust or by means of deceit, intimidation and violence which resulted in the displacement of a sizeable number of tillers and urban dwellers in the countryside and in the cities. It is also true that insurgency gets its mass-based support from the discontented peasants and urban poor dwellers and that most disturbances of peace and order arise directly or indirectly from land problems and/or conflicts. These make agrarian and urban land reform crucial to the problem of peace and order. To adopt this proposal would also hasten higher levels of economic productivity of the lands, properties and put the same to good use for the common good. In cases

involving idle or abandoned lands, these lands may be resold to qualified tillers and dwellers at cost with the supervision and administration of the proper government agency. With regard to foreclosed lands by banking institutions, the authorities should resell these lands to qualified tillers/dwellers. The same would apply to sequestered real estate properties of cronies and the like.

Matapos ideklara ni Ginoong Marcos ang martial law sa ilalim ng General Order No. 2, ang buong Pilipinas ay nasakop ng reporma sa lupa. Ginawa niyang centerpiece ng programa ng kanyang pamahalaan ang land reform. Sa pamamahala ng ating Pangulong Aquino, pitong buwan na ang nakararaan, maitatanong natin sa ating sarili: "Ano ba ang programa ng Aquino government sa agrarian reform?"

Gusto kong ibahagi sa inyo na ang nilalaman ng aking proposed section ay siya ring programa ng pamahalaang Cory Aquino. Narito po ang programa sa isang expanded agrarian reform ng pamahalaang Cory Aquino

Sa ilalim ng kanilang programang less controversial and less costly para sa taong 1987-1988: Under Operation Land Transfer: 1) Tenanted rice and corn lands — 730,734 hectares; 2) Foreclosed lands — 147,000 hectares; 3) Idle or abandoned lands — 183,000 hectares; 4) Sequestered lands — 50,000 hectares; 5) Alienable and disposable lands — 4 million hectares. Under Operation Leasehold: 1) Tenanted rice and corn lands under retention limit of 7 hectares and below; 2) Leasehold and other crops, kasama na ang niyugan, tubuhan at iba pang pananim; 3) Landsharing, Sa kabuuan ay 10 percent ang ipahihiram o ipagagamit sa mga manggagawang bukid; 4) Integrated social forestry project.

Sa ilalim naman ng programang controversial and more costly para sa taong 1989-1991: 1) Tenanted rice and corn lands within retention limit (haciendas with workers); 2) Tenanted other crops; 3) Transnational corporation farmlands; 4) Fishponds; 5) Salt beds and coastal lands. Ito ay iaatang sa Kongreso upang siyang magsagawa ng batas.

Mga kasama, hindi marahil kaila sa inyo na noong 1972, sang-ayon sa National Census and Statistics Office, ang bilang ng manggagawang bukid ay 800,000 lamang. Ngunit noong taong 1984, sang-ayon muli sa National Census and Statistics Office, ang kabuuang bilang ng mga manggagawang bukid ay 1.9 milyon. Makikita na kaagad natin na dumami ang mga magsasaka na naging landless agricultural workers pagkaraan ng 1984. Naragdagan ang bilang ng landless agricultural workers ng 1.1 milyon. Kaya itong mapapailalim ngayon sa expanded land reform program ay magkakaroon ng kabuuang karagdagan na 380,000 hectares. Masasabi nating ang kahalintulad ng proposed section na ito ay isang malawak na tubig na napapaligiran ng daang libong milyong magsasaka na nauuhaw. Kaya ang gusto po naming mangyari dito ay mapalakas natin ang programa mismong nakaangkla sa ating Saligang Batas para sa pagpapatupad ng pag-uutos na all idle, abandoned, foreclosed and sequestered lands ay mapailalim sa agrarian reform program.

MR. RAMA: May we know what the position of the committee is on the amendment?

MR. DE LOS REYES: Mr. Presiding Officer, may I ask some questions of Commissioner Tadeo?

THE PRESIDING OFFICER (Mr. Azcuna): The Honorable de los Reyes is recognized.

MR. DE LOS REYES: Commissioner Tadeo, dito po sa inyong proposal ay may binabangit kayong idle, abandoned lands. May sinasabi rin kayong foreclosed lands. Foreclosed ba ang mga ito ng bansang Pilipinas o ng mga bangko?

MR. TADEO: Foreclosed and fraudulently acquired agricultural and nonagricultural lands would refer to ill-gotten properties foreclosed by banking institutions which the owner failed to redeem after the lapse of the one-year redemption period as provided by law.

MR. DE LOS REYES: Ang ibig ba ninyong sabihin sa "FORECLOSED" ay bibilhin o expropriated ng gobyerno sa bangko na naka-foreclose?

Tungkol naman sa sequestered land, hindi na kinakailangan ang expropriation nito dahil sa hindi pa tiyak kung sino ang may-ari nito at kung sakali mang ito ay mapatunayan na nabibilang doon sa tinatawag na ill-gotten wealth, ito po ay hindi na nagangailangan ng expropriation sapagkat pag-aari na ito ng gobyerno. Sumasang-ayon po ba kayo sa aking tioriyang iyon?

MR. TADEO: Sang-ayon po kasi sa record ng Ministry of Agrarian Reform, ang sequestered agricultural land na mapapailalim sa programa para sa 1987-1988 ay 50,000 hectares lamang.

MR. DE LOS REYES: Itong sinasabing ninyong "DISTRIBUTED TO THE BENEFICIARIES OF AGRARIAN AND URBAN LAND REFORM," ang ibig ba ninyong sabihin ay hindi na bibigyan sa distribution ang iba na nangangailangan ng lupa and instead this will be exclusively for the beneficiaries of agrarian and urban land reform? How about the proposal of Commissioner Crispin de Castro that we should also give some sort of preference to veterans? How can we reconcile these provisions?

MR. TADEO: Ang mga war veterans ay may preference sa public lands. Ang aking tinukoy sa aking mungkahi ay mga private lands: idle, abandoned, foreclosed, and sequestered lands.

MR. DE LOS REYES: I see.

MR. MAAMBONG: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Azcuna): Commissioner Maambong is recognized.

MR. MAAMBONG: Commissioner Tadeo has two formulations; ang nakalagay dito ay apat. Which of the two formulations does the Commissioner prefer?

MR. TADEO: Itong last section sa page 2 na nagsisimula sa "ALL IDLE, ABANDONED, FORECLOSED, SEQUESTERED . . ."

MR. MAAMBONG: So, the Commissioner is not pursuing the other formulation on page 3?

MR. TADEO: Opo, hindi na iyong sa page 3; ito na lamang.

MR. MAAMBONG: The Commissioner prefers the one on page 2.

MR. RAMA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Azcuna): The Honorable Floor Leader is recognized.

MR. RAMA: We are still waiting for the reaction of the committee.

MR. TADEO: Tinatanggap po ba ng committee?

MR. SUAREZ: Ibigay na natin sa Commission. Mabuti nga ito dahil sa maraming conflicting versions. Iyon pong mungkahi ng komite ay itanong na natin sa mga Commissioners.

MR. RAMA: Then, I would ask Commissioner Monsod to comment as a registered speaker.

THE PRESIDING OFFICER (Mr. Azcuna): The Honorable Monsod is recognized.

MR. MONSOD: Mr. Presiding Officer, I was reading this proposed section and its total implications are really quite overwhelming because this section is a sweeping provision on all kinds of idle, abandoned, foreclosed, sequestered and fraudulently acquired agricultural and nonagricultural lands and it is all done to benefit only the

beneficiaries of agrarian and urban land reform.

I do not think that anybody would disagree or object to the spirit in which this is made. However, just in comparison with what we have approved in the section on National Economy, this partakes only of a transitory provision because of the reference to the two-year redemption period. But in terms of the impact and the coverage of this article, this is a section that has to be thoroughly discussed by the committee and by this body, rather than speedily passed on in the Transitory Provisions.

I would have second thoughts and reservations about this because its effect is that within two years, somehow all of these properties would be distributed to the lucky or fortunate beneficiaries. And the government is really put in an inflexible position where it will literally or substantially diminish its properties that can be alienated or disposed to posterity.

Secondly, there are other rights involved here. When we talk about foreclosed, sequestered, fraudulently acquired lands, there are complications as to creditors, prior rights and priorities of the use of the land because these include even nonagricultural land. I am afraid that, much as I am sure the sentiment is very noble, this provision, first, does not really belong to the Transitory Provisions and second, it is quite a substantial provision that affects many rights and cannot be dealt with summarily in this kind of formulation.

I regret that I would have to object to the inclusion of this provision in our Constitution.

SUSPENSION OF SESSION

MR. SUAREZ: Mr. Presiding Officer, may we have a suspension of the session so we can discuss this matter with the proponent?

THE PRESIDING OFFICER (Mr. Azcuna): The session is suspended.

MR. SUAREZ: Thank you.

It was 9:49 p.m.

RESUMPTION OF SESSION

At 9:55 p.m., the session was resumed.

THE PRESIDING OFFICER (Mr. Azcuna): The session is resumed.

MR. SUAREZ: Mr. Presiding Officer, may we be recognized in behalf of the committee.

THE PRESIDING OFFICER (Mr. Azcuna): Commissioner Suarez is recognized.

MR. SUAREZ: Commissioner Tadeo has submitted two alternative proposals: The first reads: "ALL IDLE, ABANDONED, FORECLOSED, SEQUESTERED AND FRAUDULENTLY ACQUIRED AGRICULTURAL AND NON-AGRICULTURAL LANDS AS DEFINED BY LAW SHALL WITHIN TWO YEARS FROM THE RATIFICATION OF THIS CONSTITUTION BE EXPROPRIATED AND DISTRIBUTED TO THE BENEFICIARIES OF AGRARIAN AND URBAN LAND REFORM." The alternative proposal in the event of the rejection of the aforementioned section would read: "THE STATE SHALL EXPROPRIATE ALL AGRICULTURAL LANDS FRAUDULENTLY ACQUIRED BY GOVERNMENT OFFICIALS AND THEIR CRONIES AND IMMEDIATELY SUBJECT THE SAME TO LAND REFORM (AGRARIAN/URBAN)."

Commissioner Monsod has called the attention of the committee and Commissioner Tadeo to the existence of Section 4 of the Article on Social Justice [sic], so may we request that Commissioner Monsod be recognized.

THE PRESIDING OFFICER (Mr. Azcuna): Commissioner Monsod is recognized.

MR. MONSOD: It is Section 4 of the Article on National Economy and Patrimony.

Mr. Presiding Officer, it seems to me the intent of the alternative section being proposed by Commissioner Tadeo ties up also with the Regalado amendment and these are lands of the public domain that are disposed of or alienated fraudulently to cronies and the like. With the reversion, these lands become agricultural land of the public domain in which instance Section 4 of the Article on National Economy and Patrimony will then be operative. This section says that in the disposition of the land — and this is an insertion by this body to the 1973 formulation — this is made subject to the requirements of agrarian reform. So, my manifestation is that it is unnecessary to make a separate provision particularly in the sections of the Article on Transitory Provisions because that is already covered by Section 4 of the Article on National Economy once the reversion has been accomplished. I also would like to point out that Section 7 of the Article on Social Justice says that:

The State shall apply the principles of agrarian reform in the disposition of other natural resources, including lands of the public domain under lease or concession . . .

I believe, therefore, that this matter is already adequately covered in both the Articles on National Economy and Social Justice.

THE PRESIDING OFFICER (Mr. Azcuna): What does Commissioner Tadeo say?

Commissioner Tadeo is recognized.

MR. TADEO: Mayroon akong katanungan sa komite. Ang sinasabi kasi ni Commissioner Monsod ay tungkol sa "public domain," ngunit 183,000 hectares ng idle and abandoned land ay private land kaya nais ko pa ring manatili iyong "IDLE, ABANDONED . . . LANDS." Sang-ayon sa Section 166 ng RA 3844, ang ibig sabihin ng idle lands ay land not devoted directly to any crop or to any definite economic purpose for at least one year prior to the notice of expropriation except for reasons other than those of force majeure or any other fortuitous event but used to be devoted or is suitable to such crop or is contiguous to land devoted directly to any crop and does not include land devoted permanently or regularly to other essential and more productive purpose.

The item "abandoned lands" means land devoted to any crop at least one year prior to the notice of expropriation but which has not been utilized by the owner for his benefit for the past five years prior to such notice of expropriation. Sang-ayon sa Ministry of Agrarian Reform, 183,000 hectares ng idle and abandoned land ay private land. Tama ang sinabi ni Commissioner Monsod tungkol sa lands of public domain, ngunit kasama sa programa ng Ministry of Agrarian Reform para sa taong 1987-1988 ang mga private lands na ito.

MR. NOLLEDO: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Azcuna): What is the pleasure of the Honorable Nollado?

MR. NOLLEDO: I would like to support the proposal, as amended, of Commissioner Tadeo about idle or abandoned lands because I remember that when Commissioner Villegas and I went to Mindanao, specifically to Butuan City, the employees of Nasipit Lumber told us about big landholdings which can easily be classified as idle or abandoned lands not planted with any kind of crops and their owners are already in the United States.

And so, I think it should be this Constitutional Commission that should mandate that idle or abandoned lands which are agricultural in nature should be distributed within a specified period to beneficiaries of agrarian reform. I believe we will be doing justice to a lot of poor people if we adopt this kind of provision, Mr. Presiding Officer.

Thank you.

MR. MONSOD: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Azcuna): The Honorable Monsod is recognized.

MR. MONSOD: We are talking about agricultural lands which are already covered by Section 5 of the Article on Social Justice which says: ". . . To this end, the State shall encourage and undertake the just distribution of all agricultural lands. . . ." So, the term "agricultural lands" already falls under the provisions of the Section on Agrarian and Natural Resources Reform because its coverage is on agricultural lands.

THE PRESIDING OFFICER (Mr. Azcuna): What does the committee say?

MR. MAAMBONG: Before the committee comments, may we know from Commissioner Tadeo what would be the formulation now if we take away the words "FORECLOSED, SEQUESTERED AND FRAUDULENTLY ACQUIRED AGRICULTURAL AND NON-AGRICULTURAL LANDS"? How would it read now?

MR. TADEO: "ALL IDLE, ABANDONED AGRICULTURAL LAND AS DEFINED BY LAW SHALL, WITHIN TWO YEARS FROM THE RATIFICATION OF THIS CONSTITUTION, BE EXPROPRIATED AND DISTRIBUTED TO THE BENEFICIARIES OF AGRARIAN REFORM."

MR. MAAMBONG: Does Commissioner Monsod maintain his objection with that kind of formulation?

MR. MONSOD: Yes, because I submit that the section on agrarian reform already includes all agricultural lands. It seems to me that the only point here is that there is a mandate that within two years, all of these idle and abandoned agricultural lands as defined by law must be expropriated and distributed to beneficiaries of the agrarian and urban land reform program. And my point is, first of all, this is a matter of policy on idle and abandoned lands. Merely putting a two-year period there does not justify its inclusion in the Transitory Provisions of this Constitution. Secondly, what happens to the state processes if they do not occur within the two-year period or if they are not consummated within the two-year period? This seems to put a mandate on the State that all idle and abandoned lands must be subjected to expropriation processes within two years. And I believe that puts too much burden on the State considering that we already have a general rule that all agricultural lands must be covered. In fact, this may be counterproductive to the efforts of the State to distribute land because we are asking the State to put priority on idle and abandoned property. That may even be against the interest of the farmers because the State may be able to include in its coverage the distribution of 500,000 hectares where there is no problem with respect to the processes of expropriation on private property. By this mandate, we are telling the State to concentrate on the 183,000 hectares.

I believe that if this is included, it may be even counterproductive to the effectiveness of the agrarian reform program. Thirdly, I believe that this does not belong to the Transitory Provisions. If at all, it should go to the Article on National Economy.

MR. MAAMBONG: May I propound just a few questions to Commissioner Tadeo?

THE PRESIDING OFFICER (Mr. Azcuna): The Honorable Maambong is recognized.

MR. MAAMBONG: When the Commissioner refers to idle, abandoned agricultural lands, do these include idle or abandoned agricultural lands covered by certificate of title?

MR. TADEO: Opo, mayroong certificate of title ang mga ito dahil nga po private land ang mga ito.

MR. MAAMBONG: As long as they are abandoned, even though they are covered by certificate of title, they will be covered by this provision?

MR. TADEO: Yes, as defined by law under RA 3844.

MR. MAAMBONG: The Commissioner is more knowledgeable about laws of this nature; I seem to recall a presidential decree to the effect that if an agricultural land is idle or abandoned, anybody can go there and plant and cultivate and get the produce. Is that decree still in effect, Mr. Presiding Officer?

MR. TADEO: Nakalagay nga ho iyon ngunit hanggang sa kasalukuyan ay hindi pa iyon naisasakatuparan. Kung ilalagay natin iyan dito sa Konstitusyon, mapabibilis ang pagsasakatuparan.

MR. MAAMBONG: But that law is still there, Mr. Presiding Officer.

MR. TADEO: Maaari mong sakahin ang lupa ngunit hindi ka magkakaroon ng tinatawag na ownership. Wala kang tenancy relation doon, kung hindi tatamnan mo lamang, gagawin mo lamang productive, ngunit walang ownership; maaari kang paalisin.

MR. MONSOD: Mr. Presiding Officer.

MS. QUESADA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Azcuna): Commissioner Monsod is recognized.

MR. MONSOD: I believe this raises a lot of complicated legal issues, Mr. Presiding Officer, and it should not be the subject of a constitutional provision. When we say expropriated lands, these presumably include lands that have a certificate of title under the Torrens system. And I believe this is a burden of responsibility being put on the State.

MR. TADEO: Nais ko lamang ipaliwanag na noong naglilingkod pa kami sa Department of Agrarian Reform bilang tauhan nito, nakita talaga namin itong mga idle and abandoned lands na totoong napakarami at nakapanghihinayang lamang. Sa ilalim ng programa ngayong 1987 at 1988, kasama ang 183,000 hectares na lupang ito sa expanded land reform program ng Ministry of Agrarian Reform. Kung sinasabing magiging burden ito sa State, bakit pa ito ilalagay mismo sa kanilang expanded land reform program?

MR. MONSOD: Why the need for the provision here if the State is already doing it as part of its program?

MR. TADEO: Upang higit pa nating patibayin ang pagsasakatuparan nito.

MR. MONSOD: The two-year period is the only part of this provision that apparently qualifies it for the Transitory Provisions. The substance of the section is really a matter of policy that should have been put in the Article on National Economy.

MS. QUESADA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Azcuna): The Honorable Quesada is recognized.

MS. QUESADA: I would just like to recall that yesterday, we approved a provision on the salary increase of government officials and employees which does not state a specific period for implementation. At the earliest possible period the government shall increase the salary scale of the other officials and employees of the national government.

In comparison, here is one big sector of our society that really demands and cries out for immediate redress of the injustices of the past years. So, is it not possible for us to strengthen whatever policy the government has adopted now to really implement this policy of agrarian reform, and if this is one such recourse, why can we not make a provision specifying not two years but maybe at the earliest possible period as we did yesterday for the government officials and employees of the national government? It is in the Article on National Economy but we have many other provisions that spell out the urgency for the government to act on because we know for a fact

that when it goes through the whirl of the bureaucratic maze it will take a long time, and this is one sector of our society that cries out. Why can we not give this kind of benefit to a big majority of our people who have not been included in the Transitory Provisions at all?

MR. DAVIDE: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Azcuna): The Honorable Davide is recognized.

MR. DAVIDE: I would only like to seek some clarification on this. As mandated, the expropriation must be undertaken by the government within two years and the properties to be expropriated will be distributed to the beneficiaries of agrarian and urban land reform. Suppose Congress will not be able to do that, what would be the effect insofar as these idle or abandoned lands are concerned? What would be the penalty on Congress? Would it mean that these idle or abandoned lands can no longer be expropriated and distributed later?

Obviously, the beneficiaries of agrarian and urban land reform would refer to the beneficiaries during the two-year period; all of these lands will be given to them. What about the other landless citizens? They are beneficiaries because under the Article on Social Justice they are already entitled to get lands. Yet, under this provision, priority is given to those who are already beneficiaries. What about the landless? What about the future beneficiaries after two years? They will have nothing from these abandoned and idle lands. Would that not be the result?

My point is, we are not really democratizing well by helping those who are not covered by the agrarian and land reform program because all these idle and abandoned lands will have to be exclusively reserved for them. So it would be undue discrimination to the landless who are not beneficiaries because the State will now be mandated to distribute all of these lands within two years to the beneficiaries.

MR. TADEO: Gusto ko lamang linawin na ang landless agricultural workers sang-ayon sa NCSO ay 1.9 milyon. Ang ibig sabihin, ang unang bibigyan ng pagkakataon dito ay ang mga landless agricultural workers — gaya nga noong sinabi ko noon pa ang mga kaingineros lamang. Paano natin patitigilin ang pagpapanot ng bundok kung 650,000 families ang walang lupa? Ang suliranin kasi natin sa agrarian reform program ay kung saan natin dadalhin ang landless agricultural worker.

MR. DAVIDE: Mr. Presiding Officer, under the land reform program, the beneficiaries are not only the agricultural workers but the farmers and farm workers. Under the Commissioner's proposal, it would be limited only to the landless farm workers, not the landless farmers.

THE PRESIDING OFFICER (Mr. Azcuna): What is the pleasure of the Floor Leader?

MR. RAMA: We have sufficiently debated on the subject and some of our Commissioners would like to go home now so I ask that we take a vote.

MR. NOLLEDO: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Azcuna): Is there any objection?

The Honorable Nollado is recognized.

MR. NOLLEDO: Before we take a vote, I just would like to clarify certain answers of Commissioner Tadeo to the questions of Commissioner Davide. When we talk of beneficiaries of agrarian reform, we do not talk only of workers but we talk also of the landless. The general rule is that the actual occupants should be given preference. But there are cases where there are no actual occupants. If there should be no actual occupants, then the government will make these lands available to other applicants who may be landless. Certain conditions may be

fixed by law. So the agrarian reform program there refers to the determination of the State to expropriate these landholdings and distribute to beneficiaries of agrarian reform. We do not talk only of tenants and agricultural workers but we talk also of anyone who is landless. So it will be the law that will define what is idle and what is abandoned land.

Mr. Presiding Officer, I would like to take this opportunity to tell the Members of this Commission that we really saw these idle and abandoned lands in Mindanao. And the people were asking us what the government can do. The government has not moved, has not done anything. And so I consider this provision really transitory in nature because the purpose is to accelerate agrarian reform.

The provision talked about by Commissioner Monsod refers to agricultural lands in general. We must classify certain lands as idle or abandoned if we are to accelerate development. We want these lands to be cultivated by people who are landless, by people who will fall under the classification of beneficiaries of land reform, as may be defined by law. We are giving flexibility to Congress, and should Congress not follow the mandate of this Commission, then let the Members be answerable to their respective constituency.

I think that is the obvious answer. However, I have reservations about the period of two years. If Commissioner Tadeo is willing to accept an amendment before we take a vote on this, we would like to increase it to five years.

MS. QUESADA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Azcuna): The Honorable Quesada is recognized.

MS. QUESADA: I was going to suggest an amendment to address the issue raised by Commissioners Monsod and Davide on the time frame.

THE PRESIDING OFFICER (Mr. Azcuna): What is the Commissioner's amendment?

MS. QUESADA: I move to delete the words "TWO YEARS" and instead put "THE EARLIEST POSSIBLE PERIOD," to allow Congress more time in effecting an immediate implementation.

THE PRESIDING OFFICER (Mr. Azcuna): Does the proponent accept this suggested amendment?

MR. TADEO: Tinatanggap ko po ang susog.

THE PRESIDING OFFICER (Mr. Azcuna): We are now ready to vote on the amendment.

MR. MAAMBONG: So the Commissioner's amendment would read: "THE EARLIEST POSSIBLE PERIOD."

MS. QUESADA: I think Commissioner Foz has a better formulation.

THE PRESIDING OFFICER (Mr. Azcuna): The Honorable Foz is recognized to read the latest permutation of the proposed amendment.

MR. FOZ: Mr. Presiding Officer, I would like to submit a substitute amendment to that presented by Commissioner Tadeo to read as follows. "AT THE EARLIEST POSSIBLE TIME, THE GOVERNMENT SHALL ACQUIRE IDLE AND ABANDONED AGRICULTURAL LANDS FOR DISTRIBUTION TO THE BENEFICIARIES OF THE AGRARIAN REFORM PROGRAM."

THE PRESIDING OFFICER (Mr. Azcuna): Does the proponent accept the substitute amendment?

MR. TADEO: Tinatanggap ko po ang susog.

THE PRESIDING OFFICER (Mr. Azcuna): The proponent has accepted the proposed substitute amendment. Does the committee accept the same? Or would the committee rather submit it to a vote?

MR. SUAREZ: That was the original stand of the committee, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Azcuna): So, we are now ready to vote.

MR. SUAREZ: Can we restate the proposed amendment?

THE PRESIDING OFFICER (Mr. Azcuna): The Honorable Foz will please restate the proposed amendment.

MR. FOZ: The amendment reads as follows: "AT THE EARLIEST POSSIBLE TIME, THE GOVERNMENT SHALL ACQUIRE IDLE AND ABANDONED AGRICULTURAL LANDS FOR DISTRIBUTION TO THE BENEFICIARIES OF THE AGRARIAN REFORM PROGRAM."

MR. NOLLEDO: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Azcuna): The Honorable Nolleddo is recognized.

MR. NOLLEDO: I propose to add the phrase "AS DEFINED BY LAW" between the words "LANDS" and "FOR."

THE PRESIDING OFFICER (Mr. Azcuna): Will Commissioner Foz please restate the substitute amendment with the proposed amendment of Commissioner Nolleddo?

MR. FOZ: "AT THE EARLIEST POSSIBLE TIME, THE GOVERNMENT SHALL ACQUIRE IDLE AND ABANDONED AGRICULTURAL LANDS AS DEFINED BY LAW FOR DISTRIBUTION TO THE BENEFICIARIES OF THE AGRARIAN REFORM PROGRAM."

MR. MAAMBONG: Is it "IDLE OR" or "IDLE AND"? I think it should be "IDLE OR ABANDONED."

MR. FOZ: "IDLE OR ABANDONED."

MS. AQUINO: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Azcuna): The Honorable Aquino is recognized.

MS. AQUINO: Just one clarification. Does the phrase "SHALL ACQUIRE" mean complying with the requirements of compensation? Or does it mean expropriating for distribution?

THE PRESIDING OFFICER (Mr. Azcuna): What does the proponent say?

MR. FOZ: I suppose that idea is covered by the general term "ACQUIRE."

MS. AQUINO: In other words, the Commissioner is saying that there is a prerequisite for a prior process of acquisition by the government paying for the land. I think the intention of the proponent is to provide for expropriation for subsequent distribution, such that I think the right formulation should be: "THE GOVERNMENT SHALL EXPROPRIATE IDLE OR ABANDONED AGRICULTURAL LANDS AS DEFINED BY LAW FOR DISTRIBUTION."

MR. FOZ: I accept the amendment.

MR. RODRIGO: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Azcuna): The Honorable Rodrigo is recognized.

MR. RODRIGO: Expropriation means giving just compensation, does it? Will "AS DEFINED BY LAW" mean as passed by Congress? Are there existing laws or shall we have to wait for laws to be passed by the coming Congress, the Members of which will be elected in accordance with this Constitution?

THE PRESIDING OFFICER (Mr. Azcuna): The Honorable Foz or the Honorable Nolleto may answer.

MR. FOZ: May I enlist the help of Commissioner Nolleto who is well versed on agrarian reform law?

MR. MAAMBONG: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Azcuna): The Honorable Maambong is recognized.

MR. MAAMBONG: I understand that in defining idle or abandoned lands, Commissioner Tadeo was reading from a law. Is that correct? Nothing here is said so therefore there is a law which defines idle or abandoned lands. Will the Commissioner cite the number of the law?

THE PRESIDING OFFICER (Mr. Azcuna): The Honorable Tadeo is recognized.

MR. TADEO: That law is Section 166 of RA 3844.

MR. RODRIGO: What is the exact meaning of "abandoned lands"?

MR. TADEO: The term "abandoned lands" means lands devoted to any crop at least one year prior to the notice of expropriation but which was not utilized by the owner for his benefit for the past five years prior to such notice of expropriation.

MR. RODRIGO: How about idle lands?

MR. TADEO: The term "idle lands" means land not devoted directly to any crop or to any definite economic purpose for at least one year prior to the notice of expropriation, except for reasons other than force majeure or any other fortuitous event but used to be devoted or is suitable to such crop or is contiguous to land devoted directly to any crop, and does not include land devoted permanently or regularly to other essential and more productive purpose.

MR. RODRIGO: Does the Commissioner mean to say that if the owner of the land does not cultivate it for even one year, that is already idle land and can be expropriated by the government even if it has a Torrens title?

MR. FOZ: I think that is a subsisting law. And if I am not mistaken, that is the so-called Code of Agrarian Reform. It exists and I think it has not been challenged.

THE PRESIDING OFFICER (Mr. Azcuna): The Chair understands that that law, RA 3844, defining idle and abandoned lands, does not authorize their expropriation but rather that they may be planted temporarily. Is that the tenor, Honorable Tadeo? Under existing law, may idle or abandoned land be planted and expropriated?

MR. NOLLETO: May I answer that, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Azcuna): The Honorable Nolleto is recognized.

MR. NOLLETO: I think the law may redefine without regard to the definitions read by Commissioner Tadeo. That is why we put the phrase "AS DEFINED BY LAW."

THE PRESIDING OFFICER (Mr. Azcuna): "AS DEFINED BY LAW" refers to a future definition by a law not necessarily RA 3844?

MR. NOLLETO: The law itself will provide for purposes of expropriation.

MR. MONSOD: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Azcuna): The Honorable Monsod is recognized.

MR. MONSOD: Does RA 838 provide for expropriation of the so-called idle or abandoned lands?

THE PRESIDING OFFICER (Mr. Azcuna): It does not according to the answer I received.

MR. TADEO: It does not. Nagbibigay lang ito ng depinasyon, ngunit wala iyong expropriation ng idle or abandoned land under RA 3844.

MR. MONSOD: So what we are trying to achieve is to take that definition and put it in the Constitution and add the expropriation. Is that what we are doing in this section?

THE PRESIDING OFFICER (Mr. Azcuna): No, the Chair understands from the proponents that under this provision they are authorizing Congress to define what are idle or abandoned lands for purposes of expropriation.

MR. MONSOD: We are also saying that we are mandating Congress to apply expropriation to such lands. This is a new mandate which is not contained in any existing law.

MR. TADEO: Yes.

MR. FOZ: May I add something, Mr. Presiding Officer?

THE PRESIDING OFFICER (Mr. Azcuna): The Honorable Foz is recognized.

MR. FOZ: If agricultural land has been idle for five years, does the Commissioner not think that something should be done to turn the land into productive use? And perhaps the filing of expropriation proceedings in court will actually compel the owners to do something about it so that it will not be subject to expropriation. I think the owner has not had the time nor the resourcefulness to devote the land to a productive purpose. Imagine if for five years the land has been lying idle without being planted with anything or without being devoted to an economic use, I think the government will have sufficient basis to really subject the land to expropriation.

MR. MONSOD: May I respond?

THE PRESIDING OFFICER (Mr. Azcuna): Just a moment. The Chair would like to recognize first the Honorable Rodrigo.

MR. RODRIGO: From the answer I got, it is not for five years but only for one year.

MR. FOZ: Five years.

THE PRESIDING OFFICER (Mr. Azcuna): Five years for abandoned lands, one year for idle lands.

MR. RODRIGO: Yes, one year for idle lands.

MR. NOLLEDO: But the definition, Mr. Presiding Officer, refers only to authorizing the use of the lands, not for purposes expropriation.

THE PRESIDING OFFICER (Mr. Azcuna): The Honorable Rodrigo is recognized.

MR. RODRIGO: Let us say the owner gets sick or travels abroad and the land becomes idle for one year; shall the government expropriate that land already?

THE PRESIDING OFFICER (Mr. Azcuna): That is why the Chair understands that we are not adopting the definition of RA 3844 for purposes of this provision on expropriation.

MR. RODRIGO: So, we shall await a definition by the coming Congress?

THE PRESIDING OFFICER (Mr. Azcuna): Yes, that is now the version I received from the proponent, as may be

defined by law, that does not necessarily mean RA 3844; there may be another law that will define what idle or abandoned land is for purposes of expropriation.

MR. RODRIGO: But in that republic act they were referring to, if land is left idle for only one year, can it already be expropriated?

THE PRESIDING OFFICER (Mr. Azcuna): I think that is not the intention.

Will Honorable Nollado please answer that?

MR. NOLLEDO: In that case we are not adopting the pertinent provisions of the decree. We are mandating Congress to fix the conditions under which a piece of land may be considered idle or abandoned. I think one year would be an unreasonably short period. I agree with Commissioner Rodrigo.

MR. RAMA: Mr. Presiding Officer, the body is ready to vote.

MR. MONSOD: May I just make one comment?

THE PRESIDING OFFICER (Mr. Azcuna): Commissioner Monsod is recognized.

MR. MONSOD: Commissioner Foz made an assumption that idle or abandoned lands are idle because the owners do not want to put them to productive use, justifying this provision on that basis. I submit that there are many lands where the owners are unable to utilize them because there is, for example, a peace and order problem. Precisely, in areas where there is insurgency, the owners are deprived of the right to cultivate their land, and here we are hitting them twice: first, by their being deprived of the use of the land because of the insurgency problem which is not their fault; and, second, by their being blamed for the unproductiveness of their land resulting in the expropriation of said land.

MR. FOZ: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Azcuna): The Honorable Foz is recognized.

MR. FOZ: The assumption, of course, is that there is normalcy; I mean, there is peace and order prevailing in the area. I am not speaking of areas where there is a serious insurgency problem.

MR. MONSOD: Are we saying that we can put this qualification?

MR. FOZ: I just made that response because mention was made in the citation of the provision of the Code of Agrarian Reform that if the land has not been planted with crops for five years — I just commented that five years is a reasonably long period — the government can use that as a basis for really going for the land. I was just saying that the government will really find an expropriation proceeding justified, if the land has not been planted with crops for five years. That is all.

MR. NOLLEDO: Just one statement, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Azcuna): Commissioner Nollado is recognized.

MR. NOLLEDO: The situation contemplated by Commissioner Monsod can be an exception. In fact, it is an exception to the additional tax for idle lands under the Real Property Tax Code.

Thank you.

MR. RAMA: The body is ready to vote.

THE PRESIDING OFFICER (Mr. Azcuna): Does the committee want the substitute amendment read again?

Will Commissioner Foz please read the substitute amendment now?

MR. FOZ: The substitute amendment reads: "AT THE EARLIEST POSSIBLE TIME, THE GOVERNMENT SHALL EXPROPRIATE IDLE OR ABANDONED AGRICULTURAL LANDS AS DEFINED BY LAW FOR DISTRIBUTION TO THE BENEFICIARIES OF THE AGRARIAN REFORM PROGRAM."

VOTING

THE PRESIDING OFFICER (Mr. Azcuna): As many as are in favor of the proposed amendment, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (Few Members raised their hand.)

As many as are abstaining, please raise their hand. (No Member raised his hand.)

The results show 15 votes in favor, 9 against and no abstention; the amendment is approved. Commissioner Maambong is recognized.

MR. MAAMBONG: Mr. Presiding Officer, can we assign this as Section 24?

THE PRESIDING OFFICER (Mr. Azcuna): This is assigned as Section 24 according to the committee.

The honorable Floor Leader is recognized for the next amendment.

MR. RAMA: There are no registered proponents.

MR. SUAREZ: May we request that the Honorable Concepcion be recognized.

THE PRESIDING OFFICER (Mr. Azcuna): The Honorable Chief Justice Concepcion is recognized.

MR. CONCEPCION: Thank you, Mr. Presiding Officer.

The last is a section in coordination with the text of the Article on the Judiciary, particularly Section 14 thereof. Section 14 contains three paragraphs, the first of which specifies the period within which the Supreme Court shall dispose of its cases, and this is 24 months; for the Court of Appeals, 12 months and the lower courts, 3 months. Section 14 (2) of the Article on the Judiciary provides that:

A case or matter shall be deemed submitted for decision or resolution upon the filing of the last pleading, brief or memorandum required by the rules of court or by the court itself.

This submission of the case is the starting point for the 18 months or 24 months for the Supreme Court, 12 months for the Court of Appeals and three months for the lower courts.

Section 14 (3) provides:

Upon the expiration of the corresponding period, a certification to this effect signed by the Chief Justice or the presiding judge shall forthwith be issued and a copy thereof attached to the record of the case or matter, and served upon the parties.

This paragraph of the text is sought to be amended by adding one sentence which reads: "THE CERTIFICATION SHALL STATE WHY A DECISION OR RESOLUTION HAS NOT BEEN RENDERED OR ISSUED WITHIN SAID PERIOD."

To complete the sequel of the thought in connection with these cases, we propose to add Section 14 (4) to read: "DESPITE THE EXPIRATION OF THE APPLICABLE MANDATORY PERIOD, THE COURT, WITHOUT PREJUDICE TO SUCH RESPONSIBILITY, IF ANY, AS MAY HAVE BEEN INCURRED IN

CONSEQUENCE THEREOF, SHALL DECIDE OR RESOLVE THE CASE OR MATTER SUBMITTED THERETO FOR DETERMINATION, WITHOUT FURTHER DELAY."

The Commissioners will take note of the fact that Section 14 refers to cases submitted or filed before the adoption of the new Constitution. And so, in the Transitory Provisions, we propose to include the provision now in question to this effect: "THE PROVISIONS OF PARAGRAPHS (3) AND (4) OF SECTION 14 OF ARTICLE ____ ON THE JUDICIARY SHALL APPLY ALSO TO CASES FILED BEFORE THE RATIFICATION OF THE PRESENT CONSTITUTION OF THE PRESENT CONSTITUTION, WHEN THE APPLICABLE PERIOD LAPSES AFTER SUCH RATIFICATION." This seeks to complement the provisions."

THE PRESIDING OFFICER (Mr. Azcuna): What does the committee say?

MR. SUAREZ: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Azcuna): The Honorable Suarez is recognized.

MR. SUAREZ: Can Chief Justice Concepcion and I strike an arrangement regarding this proposed section?

We will decide on this section tonight but on the understanding that it would be subject to the approval of Section 14 (3) and (4) of the Article on the Judiciary.

MR. CONCEPCION: With pleasure.

MR. SUAREZ: Thank you, because I understand the committee is asking for the reopening of Section 14 among other sections in the Article on the Judiciary precisely to discuss Section 14 (3) and (4).

MR. CONCEPCION: That is correct.

MR. SUAREZ: Thank you.

MR. CONCEPCION: Thank you, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Azcuna): With that understanding, is the body ready to vote?

MR. BENGZON: Yes.

VOTING

THE PRESIDING OFFICER (Mr. Azcuna): As many as are in favor of the proposed amendment, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (No Member raised his hand.)

As many as are abstaining, please raise their hand. (No Member raised his hand.)

The results show 27 votes in favor, none against and no abstention; the amendment is approved.

MR. MAAMBONG: Mr. Presiding Officer, that will be denominated as Section 25.

THE PRESIDING OFFICER (Mr. Azcuna): That is Section 25 of the Article on Transitory Provisions.

MR. SUAREZ: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Azcuna): The Honorable Suarez, the chairman of the committee, is recognized.

MR. SUAREZ: Section 7 of our proposed pending provisions has this provision which had been transposed from the Declaration of Principles and it is in connection with a reservation that this Representation had made during

the discussions on the Declaration of Principles. It has reference to the suggested deletion of the phrase "after the expiration of the RP-US Bases Agreement in 1991." And the records will bear out the fact that when this matter was taken up, the chairman of the Steering Committee pointed out the fact that the text and the concept had already been voted. And we reserved our right nonetheless to take up this matter anew after the transposition of this particular section from the Article on Transitory Provisions. We remember that the ruling of the Chair was to the effect that at the proper time, our motion for the deletion of the portion of this section would be correspondingly ruled upon, Mr. Presiding Officer. That is the parliamentary situation for this particular provision.

MR. BENGZON: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Azcuna): The Honorable Bengzon is recognized.

MR. BENGZON: I have here with me the transcript of records of the deliberation of the Commissioner on September 18. It says here that I raised precisely the point that was stated by Commissioner Suarez: That when we voted on this particular matter, we voted not only on the concept and the ideas but also on the text. And I would like to reiterate by quoting the record what happened:

MR. BENGZON: Madam President, in the past when we voted on matters that would be transposed to the Transitory Provisions, we just voted on the concepts and on the ideas. But today on this particular matter that we have voted upon, we did not only vote on the concepts, but we also voted on the text. Thus, when the body voted on the text of that particular provision that remains, that should be taken up and shall form part of the report of the Transitory Provisions. That was the way I looked at it when I voted for this.

Madam President, just one word in reply to Commissioner Davide. I think it will be recalled that this Commission recessed precisely in order that the text of the amendments of Commissioners Romulo and Bernas could be harmonized. There were only two or three areas that could not be agreed upon which were submitted to the body. Thus, what was really voted upon was not only the idea or the concept but also the text of the provision itself. So as approved by the body, it should go in toto to the report of the Committee on Transitory Provisions.

THE PRESIDENT: The Chair concurs with the manifestation of Commissioner Bengzon that what has been approved is the text as is, and that this particular text shall be placed in the Transitory Provisions.

Subsequently, Mr. Presiding Officer, I went through the following session transcripts but I could not find any other related statements of the President. Be that as it may, Mr. Presiding Officer, I would like to reiterate my manifestation and the ruling of the Chair which I have like to also reiterate the ruling of the Chair which I have just quoted and insist that this particular issue has been totally foreclosed and that the wording as approved in that session of September 18 be transposed in toto as it has been transposed in toto here in the Article on Transitory Provisions.

THE PRESIDING OFFICER (Mr. Azcuna): What does the Honorable Suarez say?

MR. SUAREZ: Mr. Presiding Officer, the fundamental issue that we raised was whether or not after the transposition of the entire section in the Article on Transitory Provisions, any one of the Commissioners could still assail or suggest amendments to the transposed provision. I think that was the issue we raised on that occasion in order to uphold the integrity of the Committee on Amendments and Transitory Provisions. In other words, when this entire section would be transposed to the Committee on Amendments and Transitory Provisions, the question was whether or not we would just act like a machine and accept it in a ministerial character without being in a position to offer amendments or alterations to the transposed section.

MR. BENGZON: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Azcuna): The Honorable Bengzon is recognized.

MR. BENGZON: Mr. Presiding Officer, that was also taken up. In fact, that was precisely the point raised by Commissioner Ople, as reflected in the transcript of the proceedings which says:

MR. OPLE: Madam President, will the chairman of the Steering Committee yield to a question?

It is, of course, presumed under the Rules that this Commission can command any of the committees. Is the Committee on Amendments and Transitory Provisions, of which I am a member, being commanded by this Commission just to receive this transitory provision and act simply as a mechanical conduit for bringing it back to the floor? And, subsequent to that, may I ask whether this is equivalent to discharging the Committee on Amendments and Transitory Provisions?

MR. BENGZON: Firstly, the Commission decided on the text of this particular concept, and therefore the Commission has approved not only the concept but also the text and the wording, and decided that it should be included in the provision on Transitory Provisions. Insofar as this particular matter is concerned, the whole thing is foreclosed.

Secondly, I do not think — and please do not consider it as a discharge of the committee's responsibility — it is just this particular text that was approved, unlike the other concepts that we have approved which we just submitted to the Committee on Amendments and Transitory Provisions and it was up to them to craft the words, after which the matter should be brought back to the floor for discussion.

MR. OPLE: So the committee is not being discharged of its task?

MR. BENGZON: The committee certainly is not being discharged of its task even insofar as this provision is concerned. It just happens that this Commission gave its imprimatur, not only insofar as the concept is concerned, but also the text.

MR. OPLE: And I presume that this action of the Commission is a precedent that will apply to other committees in the future?

MR. BENGZON: If it is clear, as it has been clear, that that is the decision of the Commission which is the highest body of this assembly.

MR. OPLE: I thank the Commissioner for his interpretation, but I did have reservations about the right of this Commission to override a committee without prior notice and without prior consultations. I suppose as a member of the committee, I accept the superior authority of the Commission, but I hope that in the future, prior consultations could be effected so that the integrity of the committees under the Rules will be properly safeguarded.

Thank you, Madam President.

So on the basis of this, I feel, Mr. Presiding Officer, that that too has been foreclosed, and, therefore, there is no other way for the Committee on Amendments and Transitory Provisions to accept the text as approved by the Commission in the session of September 18, 1986 regarding this subject matter which has already been included in this report.

MR. SUAREZ: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Azcuna): Commissioner Suarez is recognized.

MR. SUAREZ: I do not know if the chairman of the Steering Committee has a copy of the transcript of the

dialogue between this Representation and the Chair when we addressed a parliamentary inquiry regarding precisely this particular matter as to whether or not, after the transposition and the matter is taken up in the Article on Transitory Provisions, we could still submit this matter of possible amendment to this particular section or we would be straitjacketed in the sense that we have to accept it ministerially without any discretion on the part of the Committee on Amendments and Transitory Provisions to introduce further alterations or amendments to this section. And we remember distinctly that the ruling of the Chair was that the proper or corresponding ruling of the Chair would be made at the opportune time.

MR. BENGZON: This is the particular portion being referred to now by Commissioner Suarez and I quote:

THE PRESIDENT: This is the ruling of the Chair. There was a parliamentary inquiry made by Commissioner Suarez but as the Chair already stated, what was submitted to a vote was the text and the place where that particular text is to be placed. So, I believe that the matter is settled.

As to the question whether any amendment to the text will be in order or not when the report of the Committee on Amendments and Transitory Provisions is submitted, that will be resolved when the time comes. Therefore, the Chair will not make any commitment on that but will reserve its resolution on that particular point.

Is that what the Commissioner is referring to?

MR. SUAREZ: Yes, and the time has come for the ruling.

MR. BENGZON: May I request now for the ruling of the Chair.

RULING OF THE CHAIR

THE PRESIDING OFFICER (Mr. Azcuna): The ruling of the Chair is that this particular provision as voted should be accepted by the body, subject to the reservation made by the chairman of the Committee on Amendments and Transitory Provisions, which the Chair considers as a reservation by way of a motion for reconsideration. Therefore, the chairman of the Committee on Amendments and Transitory Provisions may file a motion for reconsideration of the voting on this particular provision.

MR. SUAREZ: Thank you, Mr. Presiding Officer.

MR. RAMA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Azcuna): The honorable Floor Leader is recognized.

MR. RAMA: This is a very important question but there are very few Members present now as it is very late. We should give the other Commissioners an opportunity to study and debate the question.

MR. COLAYCO: Mr. Presiding Officer, I am reserving the right to move for a reconsideration of the ruling of the Chair tomorrow morning.

THE PRESIDING OFFICER (Mr. Azcuna): The reservation is noted for appeal to the body.

MR. BENGZON: Before we suspend the session, may I remind the body that we still have to reopen the Articles on the Legislative, the Judiciary and the Executive and that the discussions on the reopening of these three articles must be finished by tomorrow in order that we would be able to follow the schedule to finish and submit the Constitution to the President on the 15th.

Mr. Presiding Officer, it seems to me that aside from this issue, there are about two or three more proposed sections or amendments. I just would like to call the attention of this body that if we have to take these up tomorrow, then we should be prepared likewise to stay up late so that we will finish the discussion of the

reopened Articles on the Legislative, the Executive and the Judiciary.

MR. SUAREZ: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Azcuna): The Honorable Suarez is recognized.

MR. SUAREZ: Thank you.

Aside from what has already been unresolved, there is still one section that has to be discussed and deliberated on by the Committee on Amendments and Transitory Provisions and this refers to the ratification of the Constitution in its entirety or, as proposed by Commissioner Bernas, in packages.

So, as the Commissioner is not here, we would remind him to be ready with the discussion by tomorrow morning.

SUSPENSION OF SESSION

MR. RAMA: Mr. Presiding Officer, I ask that we suspend the session until tomorrow at nine-thirty in the morning.

THE PRESIDING OFFICER (Mr. Azcuna): The session is suspended until tomorrow at nine-thirty in the morning.

THE PRESIDING OFFICER (Mr. Azcuna): The session is suspended until tomorrow at nine-thirty in the morning.

It was 10:56 p.m.

RESUMPTION OF SESSION

Wednesday, October 8, 1986

At 10:08 a.m., the President, the Honorable Cecilia Muñoz Palma, resumed the session.

THE PRESIDENT: The session is called to order.

NATIONAL ANTHEM

THE PRESIDENT: Everybody will please rise to sing the National Anthem.

Everybody rose to sing the National Anthem.

THE PRESIDENT: Everybody will please remain standing for the Prayer to be led by the Honorable Ricardo J. Romulo.

Everybody remained standing for the Prayer.

PRAYER

MR. ROMULO: Our Father, who art in heaven, hallowed be Thy name, Thy kingdom come, Thy will be done in the Constitutional Commission as it is in heaven. Give us this day our daily debate and forgive us our fallacies as we forgive others theirs; and lead us not into sophisms but deliver us from paradigms.

Dear Lord, for almost five months, we have labored in the vineyards of the Constitutional Commission. Much has been asked of us and much we have given. Reward, therefore, our endeavor with success through its acceptance by our people. More than this Lord, bless our work that it may bring to our people and nation the peace, progress and prosperity which we seek and so desperately need.

To us, individually, we pray, You give us that inner spiritual strength that will enable us to face our challenges with hope and serenity. Grant us that religious faith which lifts ordinary human beings to greatness in seasons of stress. Endow Your people, dear Lord, with patience and wisdom that we may collectively heal the wounds that divide this nation. Amen.

MR. RAMA: Madam President.

THE PRESIDENT: The Floor Leader is recognized.

MR. RAMA: I move that we read the additional Reference of Business.

THE PRESIDENT: Is there any objection? (Silence) The Chair hears none; the motion is approved.

The Secretary-General will read the additional Reference of Business.

ADDITIONAL REFERENCE OF BUSINESS

The Secretary-General read the following Communications, the President making the corresponding references:

COMMUNICATIONS

Letter from Mr. Apollo Z. Lateo of Santa Cruz, Laguna, seeking the adoption of Tagalog instead of Pilipino as the national language of the Philippines.

(Communication No. 1072 — Constitutional Commission of 1986)

To the Committee on Human Resources.

Letter from Mr. Conrado Alviola Dadivas of Pagadian City, Zamboanga del Sur, seeking the incorporation in the Constitution of the provision that the separation of Church and State shall be inviolable as embodied in the 1973 Constitution and as understood historically and jurisprudentially in the Philippines.

(Communication No. 1073 — Constitutional Commission of 1986)

To the Committee on Preamble, National Territory and Declaration of Principles.

Letter from Mr. Bienvenido Castillo of Pulilan, Bulacan, expressing strong objection to any provision in the proposed Constitution that would make mandatory the teaching of religion in public elementary and high schools during class hours.

(Communication No. 1074 — Constitutional Commission of 1986)

To the Committee on Human Resources.

Letter from Mr. Benigno Valeroso of Camiling, Tarlac, pointing out that like the U.S. military bases, foreign-dominated churches or religions, schools, banks, hotels and other establishments are the glistening sun of foreign colonization in the Philippines saying, however, that the bases are being leased or rented and benefiting not only the Philippines but also the Southeast Asian region.

(Communication No. 1075 — Constitutional Commission of 1986)

To the Committee on Preamble, National Territory, and Declaration of Principles.

Letter from Mr. Romeo Q. Lagunay of Rosario Heights Subdivision, Iligan City, Lanao del Norte, seeking a constitutional provision prohibiting politicians to recommend any individual for military service, to back up

military promotion, or to intercede for the retention of overstaying officers in the military.

(Communication No. 1076 — Constitutional Commission of 1986)

To the Committee on General Provisions.

Two communications expressing adherence to democracy and to the tenets and principles of the democratic form of government, repudiating communism in all its forms and implications, and also favoring the retention of the U.S. military bases in the Philippines, even beyond 1991, to wit:

(1) Mr. Bienvenido Ortiz and 277 other concerned citizens of Bacolod City.

(Communication No. 1077 — Constitutional Commission of 1986)

(2) Patria Amante and 100 other residents of Negros Occidental.

(Communication No. 1078 — Constitutional Commission of 1986)

To the Committee on Preamble, National Territory, and Declaration of Principles.

MR. RAMA: Madam President.

THE PRESIDENT: The Floor Leader is recognized.

CONSIDERATION OF PROPOSED RESOLUTION NO. 540

(Article on Transitory Provisions)

Continuation

PERIOD OF AMENDMENTS

MR. RAMA: I move that we resume consideration of the Article on Transitory Provisions.

THE PRESIDENT: Is there any objection? (Silence) The Chair hears none; the motion is approved.

May we request the honorable chairman and members of the committee to please occupy the front table.

MR. RAMA: Madam President, the parliamentary situation when we suspended the session last night was that there was a pending motion for reconsideration of the ruling of the Chair on a provision marked as no. 7 under the list of pending provisions of the committee. The movant was Commissioner Colayco. So may I ask that Commissioner Colayco be recognized.

THE PRESIDENT: Commissioner Colayco is recognized.

MR. COLAYCO: Thank you, Madam President.

Last night, I reserved the right for the reconsideration of the ruling of the then Presiding Officer, the Honorable Adolfo S. Azcuna, to the effect that notwithstanding the approval of the concept in the text of the Romulo amendment concerning the retention or subsequent renewal of the agreement involving the American bases in the Philippines, the body — notwithstanding the committee under whose auspices the matter of transitory provisions comes — has or has not the authority to reconsider and to review the approval of the provisions which were already considered, debated upon and finally approved by the entire assembly.

There was a passage in the Journal where it appears that the inquiry of Commissioner Suarez on this regard was to be ruled at that time and if I am not mistaken, the Presiding Officer ruled that the decision would be made at the proper time. Acting on this statement, Commissioner Azcuna last night, who was then the Presiding Officer, ruled

that the Committee on Transitory Provisions had the authority to review the decision of the entire body because the decision of the body was to transfer the final amended statement approved by the body to the Article on Transitory Provisions.

I move immediately for its reconsideration and I believe that the ruling was done probably in haste. Everybody was already sleepy including probably Commissioner Azcuna. And the matter was finally decided during the session on September 18, 1986 when, upon inquiry of Commissioners Suarez and Davide, the body ruled that it was already a closed matter. Commissioner Ople, it appears in the Journal, accepted this but with the reservation that in the future, matters which were to be transferred, transposed, considered and voted upon by the body and were decided to be transferred to another article should be done with prior notice of the committee at least, so that the integrity of the committee in charge of the particular article could be preserved.

So it is clear, Madam President, from the Journal of the session held on September 18, 1986 that the body decided that the final word had been said on the matter of the American bases.

I am, therefore, moving that on the basis of the ruling and the decision of the entire Assembly, as verified from the Journal of the session held on September 18, 1986, the ruling of Commissioner Azcuna be reconsidered.

THE PRESIDENT: Is the Gentleman through?

MR. COLAYCO: Yes, Madam President.

THE PRESIDENT: Commissioner Azcuna is recognized.

MR. AZCUNA: Madam President, I just would like to oppose the motion for reconsideration by way of merely expounding on the reasons for the ruling I made.

There was on record a reservation made by the Honorable Suarez as chairman of the Transitory Provisions Committee. This was the first time that the body elected to transfer a provision to an article that had not yet been considered. We had been doing the reverse where we would transfer a provision that had already been approved to an article that was on the floor.

So it is a situation where the committee has not yet done its deliberation on an article and we throw a provision already approved to that article without a committee consultation. It was on that basis, I understand, that the Honorable Suarez, as chairman of the Transitory Provisions Committee, made a reservation and that reservation was not acted upon by the Chair and the Chair also reserved its right to rule on that reservation.

Last night, when I was presiding, I ruled that that reservation amounted to the right to move for reconsideration of the provision that was thrown into the Transitory Provisions Committee. I would like to explain that by that I did not mean a right to reopen the whole thing in the same way again but rather, as chairman of the Transitory Provisions Committee, Commissioner Suarez reserved the right, that is, 1) to move for reconsideration in order to propose changes in the wordings which would make it suitable to a transitory provision since we are transferring it to the Article on Transitory Provisions; or 2) a recommendation of the very act of transferring it to his committee because his committee has not been consulted and the committee might feel that this provision does not belong to them. So he had reserved that right to stand up and say that this should be thrown back to another article without reopening it, because it should not belong to the Article on Transitory Provisions.

At least I believe that there was some reservation on that point; otherwise there would be no effect in the reservation made. I did not mean to say that the whole matter could be litigated again on a full-blown discussion. What I meant is that the Transitory Provisions Committee should be given the courtesy to say that this certain provision, as approved, does not fit with the rest of our provisions in the Transitory Provisions Article. So we

suggest that, by way of a motion for reconsideration or by way of an amendment, certain words be changed so that it will fit as a transitory provision.

That was the nature of my ruling, Madam President.

MR. BENGZON: Madam President.

THE PRESIDENT: Shall we proceed now to resolve the motion for reconsideration?

Just to clarify the situation, we have the explanation of Commissioner Azcuna, but then to set the records straight, the Chair this morning would like to clarify the situation of September 19, 1986 because that will guide us in whatever ruling we may make today.

With the indulgence of the body, although this was already quoted by Commissioner Bengzon, I would just like to refer to the transcript of September 18, 1986, 7:00 p.m., which states:

THE PRESIDENT: This is the ruling of the Chair.

There was a parliamentary inquiry made by Commissioner Suarez but as the Chair already has stated, what was submitted to a vote was the text and the place where that particular text is to be placed. So, I believe that the matter is settled.

As to the question whether any amendment to the text will be in order or not when the report of the Committee on Amendments and Transitory Provisions is submitted, that will be resolved when the time comes. Therefore, the Chair will not make any commitment on that but will reserve its resolution on that particular point.

May I explain why the Chair stated that particular point whether any amendment to the text on the U.S. bases can be submitted and admitted while the Committee on Transitory Provisions is submitting the same for consideration of the body. The reason of the Chair then was that it had to be resolved at the opportune time. Why? Because the resolution of the Chair will depend on the nature of the amendment being offered.

If the amendment is one that will change the text as well as the substance or concept provided for in what had been already approved by the body, then that proposed amendment would be out of order because of the absence of any motion for reconsideration of that particular point.

If the amendment being submitted is one that will not affect the substance or the context of the provision concerned but will only involve, let us say, a change in phraseology or something of that sort, then the Chair may permit such an amendment. That is why I said that the proper ruling will be made when the opportune time comes because it will depend on the nature of the amendment being submitted.

Does that mean that when the chairman of the Committee on Transitory Provisions submits to the body this particular provision on the U.S. military bases, whether that reopens the same for the purpose of admitting any reconsideration of the text or concept stated therein, the ruling of the Chair is that such an amendment would not be in order? It is clear that there was no motion for reconsideration reserved by the chairman of the committee on September 18, 1986. All that the honorable chairman did was to make a query, and all that the Chair did was also to respond to that query.

Therefore, we will await whatever will be the proposed amendments submitted by the committee on this particular provision, if there be any; then that will be the time when the Chair will rule whether the proposed amendment is in order or not.

In that manner, whatever may have been the intent or effect of the ruling of the Presiding Officer last night has to be adjusted to the ruling of the Chair this morning.

MR. MAAMBONG: Madam President, parliamentary inquiry from the committee.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: This is a very minor parliamentary inquiry, Madam President.

I do not seem to recall in the Rules that we have a provision for motion for reconsideration of the ruling of the Chair, but instead we have a provision on appeal from the ruling of the Chair.

May I know if what we are considering or going to consider now is actually an appeal from the ruling of the Chair?

THE PRESIDENT: The Chair believes that it is inherent in the power of the Chair to reconsider any order that it may have issued.

In other words, if there was a motion to reconsider the order of the Chair, the Chair is empowered to reconsider its order or to sustain whatever it has ruled. So that if there is any appeal now, it should be from the ruling of the Chair this morning.

MR. MAAMBONG: In other words, Madam President, we can treat the motion of Commissioner Colayco as an appeal from the ruling of the Chair.

Thank you.

MR. SUAREZ: Madam President.

MR. BENGZON: Madam President.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: Thank you, Madam President.

The statement of the parliamentary situation made by our Madam President is quite accurate. And, probably, a little confusion had arisen because of the dual personality that is being occupied by this Representation.

The records will show, Madam President, that in my individual capacity as an ordinary Commissioner, I raised the issue regarding the possible deletion of the introductory phrase "after the termination of the RP-US Military Bases Agreement in 1991" on the theory that if we allow that phrase to remain in our Constitution, it would be a recognition of the legality and validity of the RP-US Military Bases Agreement, when all along some of the Commissioners had been strongly espousing the proposition that the RP-US Military Bases Agreement is null and void ab initio.

I concede that as one of those who voted against this particular provision, I could not have raised a motion for reconsideration; we acknowledged that fact. And so, what I did was to stand up as chairman of the Committee on Transitory Provisions and to address the parliamentary inquiry already mentioned by our Madam President. In the sense that when the physical transposition of this particular provision would be made from the Article on Declaration of Principles to the Article on Transitory Provisions, would it mean, therefore, that the Committee on Transitory Provisions would not be in a position to reject or deny the referral of that provision? More basically, would it just accept such a provision mechanically or ministerially without discretion whatsoever? That was the parliamentary inquiry I raised before our Madam President. Accordingly, she handed down the ruling which she reiterated this morning. That is the entire parliamentary situation, Madam President.

I am now speaking not in behalf of the committee but in my capacity as an ordinary Commissioner. What I would have ventilated before the Committee on Transitory Provisions and ultimately on the floor is the possible deletion

of the phrase "after the expiration of the RP-US Military Bases Agreement in 1991," in connection with this particular section which has been duly endorsed by the Committee on Preamble, National Territory, and Declaration of Principles to the Committee on Amendments and Transitory Provisions. That is the idea behind all this parliamentary inquiry, Madam President.

May we now ask for the proper ruling on the matter.

MR. DE CASTRO: Madam President.

SUSPENSION OF SESSION

THE PRESIDENT: The session is suspended.

It was 10:35 a.m.

RESUMPTION OF SESSION

At 10:39 a.m., the session was resumed.

THE PRESIDENT: The session is resumed.

MR. RAMA: Madam President, I ask that Commissioner Bengzon be recognized.

THE PRESIDENT: Commissioner Bengzon is recognized.

MR. BENGZON: Thank you, Madam President.

After listening to the explanation and the statements of the honorable chairman of the Committee on Amendments and Transitory Provisions which he declared in his personal capacity as a Member of this Commission and not as chairman, reiterating his desire to delete the first phrase after the termination of the RP-US Military Bases Agreement in 1991, I feel that if we do consider that, it would be a substantial change in the concept and in the text which has already been approved by this Commission.

Having said that, Madam President, may I now request a final ruling on this matter.

RULING OF THE CHAIR

THE PRESIDENT: If the proposal or amendment of the honorable chairman of the Committee on Transitory Provisions is to delete the clause "after the expiration of the RP-US Military Bases Agreement in 1991" as provided in the text that was approved at the time when the Committee on Declaration of Principles was considering this particular section, the ruling of the Chair is that such a proposal or submission or amendment would be out of order.

In other words, as already indicated earlier, this particular section on the U.S. bases or the foreign military bases has been approved by the body in its text and in its concept and substance. Should that first clause be deleted, that would substantially affect the very concept stated in the section. Therefore, the same can no longer be considered at this time when we are considering the inclusion of this particular section in the Article on Transitory Provisions. As I have indicated earlier, this would amount to a reconsideration of the text that has been approved and such a reconsideration would no longer be tenable at this particular stage of our proceedings.

MR. SUAREZ: Madam President.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: May we just state for the record that the reason we are reiterating our motion to delete the phrase "after the expiration of the RP-US Military Bases Agreement in 1991" is in support of our contention that the said RP-US Military Bases Agreement is null and void ab initio. If we include this in the Article on Transitory Provisions or in any other part of the Constitution, it would have the effect of constitutionalizing this RP-US Military Bases Agreement recognition. We are even thinking, Madam President, that it should not be necessary to mention the words "RP-US Military Bases Agreement" in our Constitution for fear that, indeed, we would be giving constitutional benediction to this agreement when in truth and in fact, as I have already stated in the records, Madam President, quite a number of legal luminaries are claiming or asserting that said agreement is null and void ab initio. We were even quite willing to come up with an amended proposal that we would just state by way of introduction to this provision, that is, after September 30, 1991, foreign military bases, et cetera without need of even mentioning the RP-US Military Bases Agreement.

We are saying, in effect, that without dwelling or without accepting totally the validity of the ruling of the Chair we are making of record all of these circumstances in order that we can close the matter for further discussions.

Thank you, Madam President.

MR. RODRIGO: Madam President.

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: Since there is no appeal from the Chair, may I also make of record the fact that the phrase "upon the expiration of the RP-US Military Bases Agreement in 1991" is found in Committee Report No. 36 of the Committee on Preamble, National Territory, and Declaration of Principles and it is captioned "Portion for Inclusion in Transitory Provisions."

THE PRESIDENT: Is there any other comment? (Silence) The Chair hears none; we consider this matter closed.

MR. RAMA: Madam President, may I ask the committee to indicate where this provision should go in view of the ruling of the Chair.

MR. SUAREZ: This should be renumbered Section 26, Madam President.

MR. RAMA: There is no need under the ruling of the Chair to have this provision voted upon again. So may I ask, Madam President, that we move on to the next section which is listed as Item No. 8 on page 3 of the list of pending provisions.

THE PRESIDENT: Just for the record, the Chair will state that this particular section that is no. 7 in the pending provisions in the Transitory Provisions which refers to the expiration of RP-US Military Bases Agreement in 1991 and foreign military bases will be adopted as Section 26 of the Article on Transitory Provisions.

MR. SUAREZ: Yes, Madam President.

MR. RAMA: Madam President.

THE PRESIDENT: The Floor Leader may proceed.

MR. RAMA: May we now take up Item No. 8 in the list of pending provisions.

MR. SUAREZ: Madam President, may we request that Commissioner Bernas be recognized in connection with this Item No. 8 in our proposals for the Article on Transitory Provisions. This is in connection with the plan to package the ratification of the Constitution.

FR. BERNAS: Madam President, I have sniffed around to test the waters. I do not think my amendment has any

chance of surviving. So I am withdrawing my amendment in order to speed up things.

MR. SUAREZ: Thank you.

MR. MAAMBONG: Madam President.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: Actually, this provision which was originally Section 12 of the committee report does not contain yet the amendment of Commissioner Bernas. The committee is wondering if he is not insisting on the original formulation which has nothing to do with piecemeal approval. It only says:

This Constitution shall take effect immediately upon its ratification by a majority of the votes cast in a plebiscite called for the purpose and shall supersede all previous Constitutions.

There is nothing controversial about it. I was wondering if Commissioner Bernas will not proceed with this.

FR. BERNAS: The amendment I had proposed, Madam President, was an additional sentence.

MR. MAAMBONG: In other words, the Commissioner would want that this original formulation minus his amendment be considered by the committee because because this is still Section 12 of our original committee report?

FR. BERNAS: We are dealing with Section 8.

MR. MAAMBONG: Yes, Madam President, we are talking now of Section 8 but actually this is Section 12.

FR. BERNAS: Yes, Madam President, and my original amendment was to propose an additional sentence and to propose a packaged ratification.

MR. MAAMBONG: What I am asking, Madam President, is that this original formulation minus his proposed packaging could stand by itself.

FR. BERNAS: Definitely it can stand by itself, Madam President.

MR. MAAMBONG: Then would the Gentleman have any objection if we put this now to a vote?

FR. BERNAS: That is for the committee, Madam President.

MR. MAAMBONG: Because personally we feel that this provision is necessary. That is why we put it as Section 12 of the original committee formulation minus the amendment of Commissioner Bernas.

MR. BENGZON: Madam President.

MR. SUAREZ: May we put it to a vote, Madam President?

MS. QUESADA: Madam President, may we ask for a suspension of the session to confer with Commissioners Bernas and Foz concerning the withdrawal or the possible withdrawal of this amendment.

MR. MAAMBONG: Before that, Madam President, since the first sentence minus the amendment is not controversial, could we ask that we put this to a vote first, then later on an amendment may or may not be introduced?

MR. BENGZON: There is only one sentence.

MR. MAAMBONG: Precisely.

MR. SUAREZ: No, the proposed additional sentence of Commissioner Bernas. So these can be voted separately. I am referring to Section 12 as originally phrased, Madam President.

THE PRESIDENT: May we clarify this.

MS. QUESADA: Madam President.

THE PRESIDENT: The Chair understands that Commissioner Bernas is withdrawing his proposal.

MR. SUAREZ: Yes.

MS. QUESADA: Yes. Madam President, we would like to confer with Commissioner Foz who is also a coauthor of the amendment.

SUSPENSION OF SESSION

THE PRESIDENT: The session is suspended.

It was 10:50 a.m.

RESUMPTION OF SESSION

At 10:57 a.m., the session was resumed.

THE PRESIDENT: The session is resumed.

MR. RAMA: I ask that Commissioner Bernas be recognized.

THE PRESIDENT: Commissioner Bernas is recognized.

FR. BERNAS: Madam President, in response to the passionate pleas of my colleagues, I would like to restore the amendment I had proposed. The amendment which is the second sentence of the original Section 12 would read as follows: "THE PRESENTATION FOR RATIFICATION, HOWEVER, SHALL BE IN THREE DISTINCT PARTS: 1) A VOTE ON THE ARTICLE ON SOCIAL JUSTICE; 2) A VOTE ON THE ARTICLE ON THE NATIONAL ECONOMY; AND 3) A VOTE ON ALL THE REST."

Just a word of explanation. The mechanics would consist, therefore, of three questions; namely:

Do you approve Article on Social Justice? Yes or No.

Do you approve Article on the National Economy? Yes or No.

Do you approve all the rest? Yes or No.

The reason, as I explained earlier when I spoke about this, is simply to give the people the opportunity for an individualized judgment on two very key areas of our constitutional provision, two key areas or two large segments which were, in many ways, controverted. There were many opponents of the Article on Social Justice. Some of them even say that this is a retrogression from what we had under the Marcos rule. So we would ask the people to pass judgment on whether, in fact, this is a retrogression.

Second, the Article on the National Economy, again, is being criticized as anti-Filipino, pro-multinational and, therefore, harmful to the nation. So we submit this individually to the people to find out if the people agree with the critics of this article.

And finally, all the rest — all the rest, as a totality — will be a complete Constitution by itself. So even if we were to

drop the Article on Social Justice and the Article on the National Economy, we would still have a complete Constitution on the understanding that the disapproval of the Article on Social Justice and of the Article on National Economy would mean the retention of whatever we have in the present Constitution on those two subjects. And if it is desired that what we have now is changed with something other than what this Commission approved, then the Constitution itself, the new Constitution, will provide for the constituent body which can formulate the necessary amendments.

Therefore, for these reasons I propose this rather simple manner of ratification for the Constitution which is more democratic because it gives the people the opportunity for an individualized judgment on the various articles.

MR. GUINGONA: Madam President.

THE PRESIDENT: Commissioner Guingona is recognized.

MR. GUINGONA: I would like to propose an amendment to the amendment of Commissioner Bernas.

Would the Gentleman include among those to be separately ratified the Article on National Territory?

FR. BERNAS: I would not, Madam President.

MR. GUINGONA: Thank you.

THE PRESIDENT: Are there any other comments before we take a vote?

MR. FOZ: Madam President.

THE PRESIDENT: Commissioner Foz is recognized.

MR. FOZ: I would like to say a few words in support of the proposal of Commissioner Bernas.

The idea really of this proposal is to subject the submission of the constitutional draft to a more democratic process, because it gives the people a chance to examine the major portions of the constitutional draft.

I would like to report to the body that in the various places that we have gone to, for instance, in Cagayan de Oro City, together with Commissioners Maambong, Quesada, Davide and Nieva, where we attended a symposium sponsored by the UP Alumni Association, precisely one of the questions was about this proposal which has been publicized in the media, and there is some measure of support from the audience.

On other occasions where this humble servant had occasion to speak before some public forums, invariably the question was about the same proposal. Some of those in the audience would urge us to continue to press for the adoption of such a formula in the ratification of the Constitution. So I think there is some measure of support for such a scheme or a formula for submitting the draft to our people in the plebiscite and it is a more democratic way.

Thank you, Madam President.

MR. RAMA: I ask that Commissioner Quesada be recognized.

THE PRESIDENT: Commissioner Davide will speak first to be followed by Commissioner Quesada.

MR. DAVIDE: Thank you, Madam President. I will speak against this proposal on the following additional grounds.

First, it was contended by Commissioner Bernas that if these separated parts would be voted down, we will be governed, insofar as these concepts are concerned, by the existing Constitution. I do not know what he refers to as existing Constitution. Perhaps, it may be the Freedom Constitution. If that be so, then the nation would be

governed partly by a de jure Constitution and partly by a revolutionary Constitution. And that would appear rather very absurd.

Secondly, Madam President, the first sentence which is not amended speaks of the totality of the Constitution. If we approve of the Bernas proposal, we have to reword the first sentence such that it would read as follows: "This Constitution or parts thereof shall take effect upon its or their ratification in a plebiscite held for the purpose." But I do not think that that will be appropriate in the meantime. Likewise, the issues separated are not as crucial as the other issues. So we might be charged of being very partial against certain proposals. For instance, I would expect that Commissioner Maambong might propose that the issue again of the term of the incumbent President will have to be separated. Or there might be another issue regarding the bases because we cannot find any logic why, if we will allow the Bernas proposal, we will not separate two very crucial issues, that is, the bases, nuclear weapons-free Philippines and the term of the incumbent President and Vice-President.

So I am against the proposal.

MR. MAAMBONG: Madam President.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: The committee has no definite stand on the proposed amendment; we ask that it be put to a vote.

THE PRESIDENT: Commissioner Quesada is recognized.

MS. QUESADA: Madam President, the reason why I dissuaded Commissioner Bernas to reconsider his move for deletion or withdrawal is that this has been well-publicized and everybody has been asking about it. There should be the courtesy at least of having a thorough debate or discussion on the pros and cons. These people have to be guided. They were given this kind of information that it will be considered by the body but then if we just let it go because it is a dying declaration anyhow, then it will look funny that we proposed something and we do not even have the courtesy of having all these pros and cons discussed. There are 28 who voted for it. At least we must come out with the position so that the people will know why we are voting it down; why we are not even considering such a motion. And just because there are already 28 who signed for it, it is certainly going to lose; but then we would like to know the reason they are opposing it. I support the amendment because I feel that, as Commissioner Foz said, it is more democratic. It allows people who have some reservations, very strong reservations about certain articles, to have at least a chance to say yes and no for some parts which they in conscience cannot accept. And I am sure that even some Commissioners would have that kind of reservation and would not feel very thoroughly convinced that this is a perfect Constitution. Therefore, it gives us an opportunity of saying so and still not negating the entire document.

Thank you, Madam President.

THE PRESIDENT: The Commissioner can be assured that even if 28 have signed the petition and as long as those 28 are not recorded as votes, they are of no meaning.

Is there anybody who would like to comment?

MR. NATIVIDAD: Madam President.

THE PRESIDENT: Commissioner Natividad is recognized.

MR. NATIVIDAD: Thank you, Madam President.

This is inconsistent with the position we took yesterday, Madam President. We wanted to have two questions

yesterday for two vital issues in this Constitution and we voted to present just one Constitution. We want now to break up the Constitution not in two but in several portions. We came here, Madam President, to pound out one Constitution to be presented to our people. If we do this, we will be perceived by our people to be presenting several constitutions. This is going to be a mess, Madam President, a comedy — one group supporting a few articles, another group supporting another article. Instead of one Constitution presented to the people, we will present them a divided constitution. The banners will say: "Support this article. Oppose this article. Support this article. Oppose this article." We will be the laughingstock of our country, Madam President. In effect, this is an appeal from the decision of the Commission.

The debates here have set the majority in good grace. Yesterday we accepted the decision of the Commission; no sulking, no snide remarks; we bowed our heads to respect the decision of the majority. In good faith, those who were defeated in the other articles should do the same and accept the decision of the majority.

In effect, this is an appeal from this Commission and we will bring the debates to the public. And that is not the way we should present our Constitution, Madam President, because it will not serve the interest of our country. All of us here — 47 of us — presented a disunited front, presenting to our people several options. It will serve nobody's interest, except those who wanted to destabilize this government.

Thank you, Madam President.

MR. NOLLEDO: Madam President.

THE PRESIDENT: Commissioner Nollado is recognized.

MR. NOLLEDO: Thank you, Madam President.

I would like to adopt the arguments of Commissioner Natividad. I beg to disagree with my friend, Commissioner Bernas.

Madam President, I do not like to present a mangled Constitution. I think all of us here must rise and fall with the Constitution that we have adopted. I know that the basic purpose of presenting by parts the 1986 Constitution is that there are certain articles containing objectionable provisions. In that case, Madam President, I think the remedy is to present the whole Constitution before the people and let the forthcoming Congress amend or revise this Constitution whenever it finds the same necessary.

Thank you, Madam President.

MR. SUAREZ: Madam President.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: Thank you, Madam President.

May we just clear up one legal point with Commissioner Bernas?

THE PRESIDENT: The Commissioner may please proceed.

MR. SUAREZ: Madam President, quite a number of our Commissioners here are also Members of the Constitutional Convention of 1971. We recall that during the proceedings in the constitutional convention, a constitutional issue came up, because at that time the constitutional convention agreed to reduce the voting age from 21 to 18. It was the sense and feeling of the constitutional convention delegates that the matter should be hurried up and hastened, in the sense that a separate plebiscite should be called only for the purpose of submitting that constitutional amendment to the people.

A constitutionalist lawyer in the person of Senator Arturo Tolentino elevated the matter to the Supreme Court. I think our Chief Justice must have remembered that also and that was voted down in the case of Tolentino vs. COMELEC. In other words, the Supreme Court practically came up with the principle that all of these proposals and amendments should be tied up together and submitted in one single plebiscite.

Can we reconcile what Commissioner Bernas is suggesting with the doctrine enunciated in the Tolentino vs. COMELEC case, Madam President?

FR. BERNAS: Yes, Madam President. I am glad he brought up the case of Tolentino vs. COMELEC. I think a careful reading of the case will show that it does not prohibit what we are trying to propose here. We will recall that when the amendment on the voting age was presented for ratification, at that time it was the only section which had been approved by the constitutional convention. The constitutional convention had not yet acted on any other provision. So the reasoning of the Supreme Court was something like this — that this provision will be part of the total Constitution. For us to be able to pass judgment on it, we must be able to place it in the context of the Constitution of which it will be a part. Since the total context has not yet been created, then it is premature to present this for ratification. Implicitly, the Supreme Court was saying that if that proposal had been submitted for ratification even on a separate day, they would have provided that the rest of the Constitution had already been approved.

In our case when we present this, we will be presenting the entire Constitution except that we are asking for separate votes. So that when we study the Article on Social Justice and the Article on National Economy, we will be looking at them in the context of the larger picture which is not possible in the Tolentino vs. COMELEC case because at that time only one provision had been approved.

MR. SUAREZ: Therefore, we are saying, Madam President, that the Tolentino vs. COMELEC case is not applicable.

FR. BERNAS: It is not applicable; that would be my opinion, Madam President.

MR. SUAREZ: Thank you, Madam President.

MR. TINGSON: Madam President.

THE PRESIDENT: Commissioner Tingson is recognized.

MR. TINGSON: Just my humble contribution in this particular issue, Madam President.

In 1787, if I remember right, Madam President, there were interminable debates among the 13 colonies in Philadelphia with General George Washington presiding the constitutional convention, and yet when the Constitution was framed, the delegates never thought of presenting it to the 13 colonies in separate packages.

In 1899, the Malolos Constitution, Madam President, had no unanimity and yet the delegates of the Malolos Convention never thought of presenting it in different packages.

In 1935, if I am not mistaken, one of the biggest issues before the nation was the Church and State relationship. There were big debates about them, and yet the Constitutional Convention of 1935 did not think of presenting the Constitution in different packages.

In 1971, Madam President, I was a very humble member of the constitutional convention. One of the biggest issues that we debated upon for almost two months was the language issue, and yet, we never thought of presenting our Charter in different packages.

I look upon this work of ours as a unifying, cohesive factor for our nation in these very trying times and I think to

present this work of ours in different packages would be more divisive rather than unifying. Therefore, I am against the Bernas amendment.

Thank you, Madam President.

MR. RAMA: Madam President, the body is now ready to vote. May we request Commissioner Bernas to restate his amendment.

THE PRESIDENT: Commissioner Bernas is recognized.

FR. BERNAS: I quite realize, Madam President, that this was not done in 1935 or in 1877, but that should be no argument. We never had a revolution here like the one that happened in February, and yet we did it. So, the amendment will read: "THE PRESENTATION FOR RATIFICATION, HOWEVER, SHALL BE IN THREE DISTINCT PARTS: 1) A VOTE ON THE ARTICLE ON SOCIAL JUSTICE; 2) A VOTE ON THE ARTICLE ON NATIONAL ECONOMY; AND 3) A VOTE ON ALL THE REST."

VOTING

THE PRESIDENT: As many as are in favor, please raise their hand. (Few Members raised their hand.)

As many as are against, please raise their hand. (Several Members raised their hand.)

The results show 10 votes in favor and 31 against; the amendment is lost.

MR. RAMA: Commissioner Maambong would like to be recognized.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: Madam President, may we now put to a vote the original formulation of the committee as indicated in Section 12, unless there are other Commissioners who would like to present amendments.

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: May I propose the following amendments.

On line 2, delete the words "its ratification" and lieu thereof insert the following: "THE PROCLAMATION BY THE PRESIDENT THAT IT HAS BEEN RATIFIED." And on the last line, after "constitutions," add the following: "AND THEIR AMENDMENTS."

MR. MAAMBONG: Just a moment, Madam President. If Commissioner Davide is going to propose an additional sentence, the committee would suggest that we take up first his amendment to the first sentence as originally formulated. We are now ready to comment on that proposed amendment.

The proposed amendment would be to delete the words "its ratification" and in lieu thereof insert the words "THE PROCLAMATION BY THE PRESIDENT THAT IT HAS BEEN RATIFIED." And the second amendment would be: After the word "constitutions," add the words "AND THEIR AMENDMENTS."

The committee accepts the first proposed amendment. However, we regret that we cannot accept the second proposed amendment after the word "constitutions" because the committee feels that when we talk of all previous Constitutions, necessarily it includes "AND THEIR AMENDMENTS."

MR. DAVIDE: With that explanation, I will not insist on the second. But, Madam President, may I request that I be allowed to read the second amendment so the Commission would be able to appreciate the change in the first.

MR. MAAMBONG: Yes, Madam President, we can now do that.

MR. DAVIDE: The second sentence will read: "THE PROCLAMATION SHALL BE MADE WITHIN FIVE DAYS FOLLOWING THE COMPLETION OF THE CANVASS BY THE COMMISSION ON ELECTIONS OF THE RESULTS OF SUCH PLEBISCITE."

MR. MAAMBONG: Madam President, after conferring with our chairman, the committee feels that the second proposed amendment in the form of a new sentence would not be exactly necessary and the committee feels that it would be too much for us to impose a time frame on the President to make the proclamation. As we would recall, Madam President, in the approved Article on the Executive, there is a provision which says that the President shall make certain that all laws shall be faithfully complied. When we approve this first sentence, and it says that there will be a proclamation by the President that the Constitution has been ratified, the President will naturally comply with the law in accordance with the provisions in the Article on the Executive which we have cited. It would be too much to impose on the President a time frame within which she will make that declaration. It would be assumed that the President would immediately do that after the results shall have been canvassed by the COMELEC.

Therefore, the committee regrets that it cannot accept the second sentence which the Gentleman is proposing, Madam President.

MR. DAVIDE: I am prepared to withdraw the same on the assumption that there will be an immediate proclamation of the results by the President.

MR. MAAMBONG: With that understanding, Madam President.

MR. DAVIDE: I will not insist on the second sentence.

FR. BERNAS: Madam President.

THE PRESIDENT: Commissioner Bernas is recognized.

FR. BERNAS: I would ask the committee to reconsider its acceptance of the amendment which makes the effectivity of the new Constitution dependent upon the proclamation of the President. The effectivity of the Constitution should commence on the date of the ratification, not on the date of the proclamation of the President. What is confusing, I think, is what happened in 1976 when the amendments of 1976 were ratified. In that particular case, the reason the amendments of 1976 were effective upon the proclamation of the President was that the draft presented to the people said that the amendment will be effective upon the proclamation made by the President. I have a suspicion that that was put in there precisely to give the President some kind of leeway on whether to announce the ratification or not. Therefore, we should not make this dependent on the action of the President since this will be a manifestation of the act of the people to be done under the supervision of the COMELEC and it should be the COMELEC who should make the announcement that, in fact, the votes show that the Constitution was ratified and there should be no need to wait for any proclamation on the part of the President.

MR. MAAMBONG: Would the Gentleman answer a few clarificatory questions?

FR. BERNAS: Willingly, Madam President.

MR. MAAMBONG: The Gentleman will agree that a date has to be fixed as to exactly when the Constitution is supposed to be ratified.

FR. BERNAS: I would say that the ratification of the Constitution is on the date the votes were supposed to have been cast.

MR. MAAMBONG: Let us go to the mechanics of the whole thing, Madam President. We present the Constitution to a plebiscite, the people exercise their right to vote, then the votes are canvassed by the Commission on Elections. If we delete the suggested amendment which says: "THE PROCLAMATION BY THE PRESIDENT THAT IT HAS BEEN RATIFIED," what would be, in clear terms, the date when the Constitution is supposed to be ratified or not ratified, as the case may be?

FR. BERNAS: The date would be the casting of the ballots. If the President were to say that the plebiscite would be held, for instance, on January 19, 1987, then the date for the effectivity of the new Constitution would be January 19, 1987.

MR. MAAMBONG: In other words, it would not depend on the actual issuance of the results by the Commission on Elections which will be doing the canvass? That is immaterial, Madam President.

FR. BERNAS: It would not, Madam President, because "ratification" is the act of saying "yes" and the act of saying "yes" is done when one casts his ballot.

MR. MAAMBONG: So it is the date of the plebiscite itself, Madam President?

FR. BERNAS: Yes, Madam President.

MR. MAAMBONG: With that statement of Commissioner Bernas, we would like to know from the proponent, Commissioner Davide if he is insisting on his amendment.

MR. DAVIDE: Madam President, I am insisting on the amendment because I cannot subscribe to the view of Commissioner Bernas that the date of the ratification is reckoned from the date of the casting of the ballots. That cannot be the date of reckoning because it is a plebiscite all over the country. We do not split the moment of casting by each of the voters. Actually and technically speaking, it would be all right if it would be upon the announcement of the results of the canvass conducted by the COMELEC or the results of the plebiscite held all over the country. But it is necessary that there be a body which will make the formal announcement of the results of the plebiscite. So it is either the President or the COMELEC itself upon the completion of the canvass of the results of the plebiscite, and I opted for the President.

MR. RODRIGO: Madam President, may I just ask a question of Commissioner Bernas?

THE PRESIDENT: Commissioner Rodrigo is recognized.

FR. BERNAS: Yes, Madam President.

MR. RODRIGO: Commissioner Bernas said that the date should be on the day of the election when the ballots are cast. I read in the papers that considering the number of candidates that will be written in the ballot, the voting might last for two days. I am sorry, it is jet lag, Madam President.

MR. NOLLEDO: Madam President.

THE PRESIDENT: Commissioner Nollado is recognized.

MR. NOLLEDO: Thank you, Madam President.

I beg to disagree with Commissioner Davide. I support the stand of Commissioner Bernas because it is really the date of the casting of the "yes" votes that is the date of the ratification of the Constitution. The announcement merely confirms the ratification even if the results are released two or three days after. I think it is a fundamental principle in political law, even in civil law, because an announcement is a mere confirmation. The act of ratification is the act of voting by the people. So that is the date of the ratification. If there should be any need for

presidential proclamation, that proclamation will merely confirm the act of ratification.

Thank you, Madam President.

THE PRESIDENT: Does Commissioner Regalado want to contribute?

MR. REGALADO: Madam President, I was precisely going to state the same support for Commissioner Bernas, because the canvass thereafter is merely the mathematical confirmation of what was done during the date of the plebiscite and the proclamation of the President is merely the official confirmatory declaration of an act which was actually done by the Filipino people in adopting the Constitution when they cast their votes on the date of the plebiscite.

MR. LERUM: Madam President, may I be recognized.

THE PRESIDENT: Commissioner Lerum is recognized.

MR. LERUM: I am in favor of the Davide amendment because we have to fix a date for the effectivity of the Constitution. Suppose the announcement is delayed by, say, 10 days or a month, what happens to the obligations and rights that accrue upon the approval of the Constitution? So I think we must have a definite date. I am, therefore, in favor of the Davide amendment.

MR. MAAMBONG: Madam President.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: With the theory of the Commissioner, would there be a necessity for the Commission on Elections to declare the results of the canvass?

FR. BERNAS: There would be because it is the Commission on Elections which makes the official announcement of the results.

MR. MAAMBONG: My next question which is the final one is: After the Commission on Elections has declared the results of the canvass, will there be a necessity for the President to make a proclamation of the results of the canvass as submitted by the Commission on Elections?

FR. BERNAS: I would say there would be no necessity, Madam President.

MR. MAAMBONG: In other words, the President may or may not make the proclamation whether the Constitution has been ratified or not.

FR. BERNAS: I would say that the proclamation made by the President would be immaterial because under the law, the administration of all election laws is under an independent Commission on Elections. It is the Commission on Elections which announces the results.

MR. MAAMBONG: But nevertheless, the President may make the proclamation.

FR. BERNAS: Yes, the President may. And if what he says contradicts what the Commission on Elections says, it would have no effect. I would only add that when we say that the date of effectivity is on the day of the casting of the votes, what we mean is that the Constitution takes effect on every single minute and every single second of that day, because the Civil Code says a day has 24 hours. So that even if the votes are cast in the morning, the Constitution is really effective from the previous midnight.

So that when we adopted the new rule on citizenship, the children of Filipino mothers or anybody born on the date of effectivity of the 1973 Constitution, which is January 17, 1973, are natural-born citizens, no matter what time

of day or night.

MR. MAAMBONG: Could we, therefore, safely say that whatever date is the publication of the results of the canvass by the COMELEC retroacts to the date of the plebiscite?

FR. BERNAS: Yes, Madam President.

MR. MAAMBONG: I thank the Commissioner.

MR. GUINGONA: Madam President.

THE PRESIDENT: Commissioner Guingona is recognized.

MR. GUINGONA: Mention was made about the need for having a definite date. I think it is precisely the proposal of Commissioner Bernas which speaks of the date of ratification that would have a definite date, because there would be no definite date if we depend upon the canvassing by the COMELEC.

Thank you.

THE PRESIDENT: Commissioner Concepcion is recognized.

MR. CONCEPCION: Thank you, Madam President.

Whoever makes the announcement as to the result of the plebiscite, be it the COMELEC or the President, would announce that a majority of the votes cast on a given date was in favor of the Constitution. And that is the date when the Constitution takes effect, apart from the fact that the provision on the drafting or amendment of the Constitution provides that a constitution becomes effective upon ratification by a majority of the votes cast, although I would not say from the very beginning of the date of election because as of that time it is impossible to determine whether there is a majority. At the end of the day of election or plebiscite, the determination is made as of that time — the majority of the votes cast in a plebiscite held on such and such a date. So that is the time when the new Constitution will be considered ratified and, therefore, effective.

THE PRESIDENT: May we now hear Vice-President Padilla.

MR. PADILLA: Madam President, I am against the proposed amendment of Commissioner Davide and I support the view of Commissioner Bernas and the others because the ratification of the Constitution is on the date the people, by a majority vote, have cast their votes in favor of the Constitution. Even in civil law, if there is a contract, say, between an agent and a third person and that contract is confirmed or ratified by the principal, the validity does not begin on the date of ratification but it retroacts from the date the contract was executed.

Therefore, the date of the Constitution as ratified should retroact to the date that the people have cast their affirmative votes in favor of the Constitution.

MR. MAAMBONG: Madam President.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: We will now ask once more Commissioner Davide if he is insisting on his amendment.

MR. DAVIDE: In view of the explanation and overwhelming tyranny of the opinion that it will be effective on the very day of the plebiscite, I am withdrawing my amendment on the assumption that any of the following bodies — the Office of the President or the COMELEC — will make the formal announcement of the results.

MR. RAMA: Madam President, we are now ready to vote on the original provision as stated by the committee.

MR. MAAMBONG: The committee will read again the formulation indicated in the original committee report as Section 12.

This Constitution shall take effect immediately upon its ratification by a majority of the votes cast in a plebiscite called for the purpose and shall supersede all previous Constitutions.

We ask for a vote, Madam President.

VOTING

THE PRESIDENT: As many as are in favor, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (No Member raised his hand.)

The results show 35 votes in favor and none against; Section 12 is approved.

MR. RAMA: I ask that Commissioner Ople be recognized, Madam President.

MR. SUAREZ: Commissioner Ople's amendment is about shares of stock.

THE PRESIDENT: May the Chair inquire from the Honorable Chairman, Commissioner Suarez, how many provisions are still pending.

MR. SUAREZ: Only one more; the one of Commissioner Ople.

May we request that the Honorable Ople be recognized for a proposal, Madam President.

THE PRESIDENT: Commissioner Ople is recognized.

MR. OPLE: Thank you, Madam President.

This proposed amendment pertains to Section 8, but after a conference with the committee, I have asked that this be just read as an input into the previous question on Section 8 so that it will no longer appear as an amendment but as an input.

It reads: "SHARES OF STOCK UNDER SEQUESTRATION IN A CORPORATION MAY NOT BE VOTED TO ESTABLISH CONTROL OF THAT CORPORATION EXCEPT UPON DETERMINATION BY THE SANDIGANBAYAN OF THE TRUE OWNERSHIP OF THE SHARES."

And to abbreviate the proceedings, may I just request that the explanatory note which consists of just three paragraphs be inserted in the record, Madam President. [*]

Thank you.

THE PRESIDENT: In other words, Commissioner Ople is not insisting on this as an amendment.

MR. OPLE: No, as a result of my conference with the committee, Madam President.

MR. GUINGONA: Madam President.

THE PRESIDENT: Commissioner Guingona is recognized.

MR. GUINGONA: Just for the record, I would like to register my opposition to the provision read which is not being presented as an amendment.

Thank you.

THE PRESIDENT: So the Commissioner has a contrary view on this particular point.

MR. GUINGONA: Yes, Madam President.

MR. SUAREZ: May we request that the Honorable Maambong be recognized for some reconciliations on Sections 1 and 15.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: Madam President, this could very well be done by the Committee on Style. But I might as well tell the Committee on Style about our intention. The second paragraph of Section 1 which we have approved says:

The first local elections shall be held on the date to be determined by the President, which may be simultaneous with the election of the Members of the Congress.

The committee suggests to the Committee on Style that the first paragraph of Section 15, which is related to this provision, be transposed to this second paragraph of Section 1. It reads:

It shall include the election of members of the city or municipal council in the Metropolitan Manila area.

So the second paragraph of Section 1 would finally read: "The first local elections shall be held on the date to be determined by the President, which may be simultaneous with the election of the Members of the Congress. It shall include the election of members of the city or municipal council in the Metropolitan Manila area." The second paragraph of Section 15 will remain in that section.

Finally, Madam President, in Section 17, we started with the sentence "With subprovinces" so we should change the word "its" to "THEIR." And the last word "province" should be "PROVINCES."

Thank you, Madam President.

MR. RAMA: Madam President.

THE PRESIDENT: The Floor Leader is recognized.

MR. RAMA: There are no more amendments, so I move that we close the period of amendments on the Article on Transitory Provisions.

THE PRESIDENT: Is there any objection? (Silence) The Chair hears none; the period of amendments is closed.

MR. MAAMBONG: Madam President, may we know from the Floor Leader whether we can now vote on Second Reading on this whole article.

MR. RAMA: It depends on the body, if they would wish to vote without the finished draft.

THE PRESIDENT: Is the committee ready to vote?

MR. RAMA: May we ask, Madam President, that we vote on Second Reading on all the sections in the Article on Transitory Provisions.

THE PRESIDENT: Is the committee ready with all the clean copies of all the sections?

MR. MAAMBONG: Yes, Madam President, except for what we approved today. But I would like to indicate for the record that our Secretariat has been very kind in furnishing us all the approved provisions and sections on a day-to-day basis.

So except for what we have approved today, we are complete in clean copies.

APPROVAL OF PROPOSED RESOLUTION NO. 540 ON SECOND READING

(Article on Transitory Provisions)

THE PRESIDENT: Is there any objection? (Silence) The Chair hears none; the motion is approved.

We are ready to approve on Second Reading the whole article.

Will the Secretary-General read the title of this proposed article on Second Reading.

THE SECRETARY-GENERAL: Proposed Resolution No. 540, entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION AN ARTICLE ON TRANSITORY PROVISIONS

THE PRESIDENT: As many as are in favor of this proposed Article on Transitory Provisions, Sections 1 to 26, all of which have been duly approved in the different sessions of the body, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (No Member raised his hand.)

As many as are abstaining, please raise their hand. (Three Members raised their hand.)

The results show 33 votes in favor, none against and 3 abstentions; the Article on Transitory Provisions is approved.

MR. SUAREZ: Madam President.

THE PRESIDENT: The chairman of the Committee is recognized.

MR. SUAREZ: The committee will now rest its case and we would like to thank each and every one of the Commissioners for his/her kind cooperation in the smooth approval of this Article on Transitory Provisions.

Thank you again. (Applause)

THE PRESIDENT: Thank you, Commissioner Suarez.

MR. RAMA: Madam President, this is a historic moment because technically, we have finished the Constitution as of this moment, save those reservations on other matters.

THE PRESIDENT: Can we say that this is the date of ratification within the hall?

MR. RAMA: Madam President, as to the other matters involving style, may I ask that Commissioner Monsod be recognized.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: Madam President, I am circulating a proposal that has been signed by several Commissioners which pertains to the reservation I made to Section 4 of the Article on the Declaration of Principles which is a matter of record. I would like to move for a reconsideration which was a reservation so that I can introduce a clarificatory amendment to Section 4.

THE PRESIDENT: Will the Commissioner please state it.

MR. MONSOD: Section 4 shall read: "THE PHILIPPINES, CONSISTENT WITH THE NATIONAL INTEREST, ADOPTS AND PURSUES A POLICY OF FREEDOM FROM NUCLEAR WEAPONS IN ITS TERRITORY."

Madam President, the purpose of the amendment is to reflect more accurately the intent of the committee and the Commission that freedom from nuclear weapons is a general policy which is subject to exceptions involving our national interest. I attached the excerpts of the minutes to this proposal and also, I consulted with Commissioner Azcuna who is the original proponent of this section, as well as with Commissioner Davide who had introduced several amendments for the final text. Both of them had agreed that the change would reflect more accurately the concept and the intent of the committee and this body.

MR. SARMIENTO: Madam President, parliamentary inquiry.

THE PRESIDENT: Commissioner Sarmiento is recognized.

MR. SARMIENTO: Madam President, I recall that Commissioner Monsod made that reservation because of an amendment intended to be filed by Commissioner Suarez; so that Monsod amendment is connected with that Suarez amendment. If Commissioner Suarez is not decided in pursuing that amendment which gave rise to that Monsod reservation, then that Monsod amendment will be . . . (deleted by order of the Chair). . . That is my humble submission, Madam President. So may I inquire from Commissioner Suarez whether he is pursuing that amendment which gave rise to that Monsod reservation.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: I believe the record is very clear that at that time, I said there were three reasons why I was going to seek a reservation. One of them was the proposal at that time which was not pursued by Commissioner Suarez. There were other reasons that I gave and, in fact, I asked questions of Commissioner Azcuna. If the Commissioner will read the attachment of the excerpt, it is very clear that I said I still reserve the right to ask for a reconsideration with respect to this section which I understand is now Section 7 and not Section 4. I believe the objection of Commissioner Sarmiento does not reflect the entire proceedings or the reasons I made the reservation. The reason I am asking for this now is that there has been quite a bit of confusion as to the real intent and meaning, because the way the phrase is stated, it is capable of different interpretations from the real meaning attached to it by the committee and this body when we voted on it. Hence, the need to clarify it because people do not look into the proceedings or the Journal. They just judge it on the basis of the text. I think that, in fairness to our government and the people, we should be clear as to the intent by reflecting that accurately in the text of the section.

SUSPENSION OF SESSION

THE PRESIDENT: The session is suspended.

It was 11:50 a.m.

RESUMPTION OF SESSION

At 12:06 p.m., the session was resumed.

THE PRESIDENT: The session is resumed.

MR. RAMA: Madam President.

THE PRESIDENT: The Floor Leader is recognized.

MR. RAMA: I ask that Commissioner Monsod be recognized.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: Madam President, I wanted to propose this clarificatory amendment because there is some confusion as to the interpretation of the words "CONSISTENT WITH," although the body has decided and it is on record that this is a general policy. In other words, "CONSISTENT WITH" means or is equivalent to "subject to." Still for people who do not bother to take a look at our record, they interpret it the way they want it to be and there might be a confusion in the minds of our countrymen as to what this section really means. That is the reason I wanted to present this amendment, Madam President. However, I believe the committee and the principal proponent of the concept of this section, Commissioner Azcuna, agree with the interpretation. I would like to ask Commissioner Azcuna for a clarification now with respect to the meaning of "CONSISTENT WITH."

THE PRESIDENT: Commissioner Azcuna is recognized.

MR. AZCUNA: Thank you, Madam President.

On behalf of the committee and as the proponent of this provision on the floor, I would like to affirm that the words "CONSISTENT WITH," with respect to the nuclear weapons-free provision, mean "subject to" the national interest. I believe there is no need to change that phrase to "SUBJECT TO" because that is really what it means as confirmed by our deliberations. So I suggest that Commissioner Monsod no longer pursue the proposed amendment since "CONSISTENT WITH" really means "subject to."

MR. OPLE: Madam President.

THE PRESIDENT: Commissioner Ople is recognized.

MR. OPLE: May I know whether there is any Commissioner dissenting from this interpretation of the phrase "CONSISTENT WITH" just given by Commissioner Azcuna.

THE PRESIDENT: There is no one standing to make a dissent.

MR. DE LOS REYES: Madam President.

THE PRESIDENT: Is Commissioner de los Reyes dissenting?

MR. DE LOS REYES: May I just insert in the record a short comment — I will not read it anymore — in support of this concept.

MR. AZCUNA: Commissioner de los Reyes is the proponent, the main author, of this provision.

THE PRESIDENT: So as requested and as part of the statement made by Commissioner Azcuna, let this document which was submitted earlier by Commissioner Monsod explaining why he was proposing the change of the words "CONSISTENT WITH" to "SUBJECT TO" be entered in and made part of the record. [**]

MR. MONSOD: Madam President, I have a follow-up question of Commissioner Azcuna. May I just finish.

THE PRESIDENT: The Commissioner will please proceed.

MR. MONSOD: I also wanted to clarify because there are some who would interpret the phrase "CONSISTENT WITH" in this manner: that the phrase "CONSISTENT WITH" is placed there as the basis for adopting and pursuing the policy of freedom from nuclear weapons. I just want to clarify that this is not necessarily the meaning because we are saying that that phrase "CONSISTENT WITH" means "subject to."

THE PRESIDENT: Commissioner Azcuna is recognized.

MR. AZCUNA: The phrase "CONSISTENT WITH," as I said, means "subject to," Madam President. Precisely, therefore, it means that both the adoption and the pursuit of the policy, as well as any exceptions therefrom, must be subject to the national interest.

MR. MONSOD: I am satisfied with that reply, Madam President.

Is it also understood, Madam President, that my motion as printed here would be entered into the record so that there will be no confusion again as to the meaning?

MR. VILLACORTA: Madam President, may I be recognized.

THE PRESIDENT: Commissioner Villacorta is recognized.

MR. VILLACORTA: Madam President, I think the body is entitled to know the content of what Commissioner de los Reyes submitted, because if it is just entered into the record and there is no reaction from the Commissioners who, if they knew the content, would normally have reacted, then it could lead to misinterpretation. So with the indulgence of Commissioner de los Reyes, may I request that he read out the resolution or whatever statement he submitted to the Secretariat.

THE PRESIDENT: Copies of this have been circulated, I understand, among the Commissioners, but Commissioner de los Reyes may read it as requested.

MR. DE LOS REYES: Madam President, I submitted a copy of my comment to the Secretary-General and I think she has caused the printing of the same for distribution to the Members of this Commission. I decided not to read the same in order not to waste the precious time of this honorable Commission after I delivered a long speech yesterday, but since I am being asked to read my comment, then I will oblige.

The U.S. military bases in the Philippines, as competently stated in the brilliant speeches of our colleagues, were here long before the conceptualization of nuclear wars. The strategy of their presence in our country is in the concept of a conventional war or conventional armed engagement. Even the choke points so ably explained by the Honorable Crispino de Castro in his speech in support of the U.S. bases in the Philippines are in consonance with conventional armed engagements, not nuclear wars. All these choke points and all the U.S. bases in our country are of insignificant importance in the event of a nuclear war between Russia and America. I have already explained this. We need a nuclear missile-free policy to convey to the world, especially to Russia and America, the folly, perhaps even the stupidity, of huge nuclear weapon arsenals that must sooner or later be justified only by actual use. The Americans and the Russians are part of what we call humanity. Our voice might be just a tiny sound in a world dominated by superpowers; even then, our obligation to humanity demands that we speak the truth. And the truth is that the single existing thing that can wipe out humanity is the nuclear missile. Let me say this: It is more in keeping with enlightenment and our relation to God to be obsessed by the desire to preserve humanity than to contribute to its destruction. I say this because we know only too well that a nuclear war will put humanity in an irreversible state of destruction. Why in God's name should we contribute to our own destruction?

That is all I said in my comment.

MR. VILLACORTA: Madam President, may I just place on record my extreme disagreement with the statement of Commissioner de los Reyes — his claim that the U.S. military and naval bases are merely for the purpose of conventional warfare. I think the arguments and evidences I presented in the speech that I gave when we were discussing the issue on military bases could be a reference, and I had cited from the materials produced by the U.S. Information Service itself to the effect that the bases of the United States here are strategic, not only for the Asia-Pacific region but even for the Indian Ocean region and, therefore, it is highly unlikely. In fact, it is naive to think that these bases are merely for the purpose of conventional warfare.

Thank you, Madam President.

MR. JAMIR: Madam President.

THE PRESIDENT: Commissioner Jamir is recognized.

MR. JAMIR: I would like to ask a question or two of Commissioner Monsod.

MR. MONSOD: Willingly, Madam President.

MR. JAMIR: I understand from the Commissioner's statement that the phrase "CONSISTENT WITH" which we have approved has the same meaning as "subject to."

MR. MONSOD: That is the interpretation of the committee, this Representation and now the body because there was no objection to it.

MR. JAMIR: No, I was about to object to it but it was quite late. That is why I am seeking a clarification. In the Commissioner's opinion, which more clearly expresses our intention, the phrase "subject to" or "CONSISTENT WITH"?

MR. MONSOD: "Subject to."

MR. JAMIR: Why do we not use it then to avoid future misinterpretation?

MR. MONSOD: The reason we felt it might not be necessary anymore is that it seems the whole body has adopted the same meaning and it may not be necessary to do that because it might precipitate misinterpretations on our action. Therefore, since there is no doubt as to the meaning, we have been requested to stay with the present text.

MR. JAMIR: There is a doubt in that the phrase "subject to" expresses our intention more clearly than the words "CONSISTENT WITH." that is why I said a common Filipino will not look into our record. He will not look into the discussions here. He will just look upon the face of the Constitution. Why do we not make it easy for our people to find out what our real intentions are?

MR. MONSOD: That has merits, Madam President. In fact, that is the original reason I made this proposal. We have been discussing with our colleagues the issue of whether it is still necessary to do that because the principal persons who will have to avail of the interpretation is the government, and there is enough in the record for the government not to have any uncertainty as to what the meaning is.

MR. JAMIR: When the Commissioner asked me to sign this resolution substituting the words "subject to" with the words "CONSISTENT WITH," I was made to understand that this proposal is necessary to erase all doubts as to the meaning of this provision and I, in good faith, signed it. May I know why there is such a sudden change of attitude. The Commissioner was the one who assured me that this is necessary.

MR. MONSOD: Yes, I felt there was a need to do that because there were some misinterpretations by some newspaper columnists and newspapermen.

When I proposed it, it seemed that there was no doubt in the minds of our fellow Commissioners. Since I have not formally withdrawn my proposal, I guess this should be subject to debate, as the Commissioner is now doing. But I was prepared to accept the interpretation, but in view of the Commissioner's objection, maybe we should ask for a suspension of two minutes and see whether it is still necessary to do that.

THE PRESIDENT: Commissioner Jamir, maybe this would also help in appreciating the situation of Commissioner Monsod where he finds himself now.

There is the transcript of September 20 where Commissioner Monsod addressed this question to Commissioner Azcuna:

MR. MONSOD: In other words, the general rule is that the Philippines adopts and pursues a policy of nuclear weapons-free Philippines subject to such exceptions as the government may allow in the national interest.

MR. AZCUNA: That is right. This is a basic policy, and any divergence from that policy while they are possible can only be justified on one test, on the crucible of national interest.

MR. MONSOD: Mr. Vice-President, that is my question for today. I still reserve the right to ask for a reconsideration of the approval of Section 4, if and when there is any more equivocation or if there is any proposal which, in our view, does not reflect this policy.

Thank you, Mr. Vice-President.

So I suppose the Chair understands that Commissioner Monsod was satisfied with the question he addressed to Commissioner Azcuna this morning about these words "subject to" and "CONSISTENT WITH." And that could be the reason why Commissioner Monsod is making, at least, a preliminary statement that he seems not to insist on his resolution.

MR. JAMIR: Madam President, I am satisfied that in the interpellation between Commissioners Monsod and Azcuna, it is clear that the words "CONSISTENT WITH" have the same meaning as "subject to." What I am afraid of is that our fellow citizens who have no time nor the inclination to go deep into our record will not understand that they have the same meaning. For us here, we understand that that was the meaning we wish to attribute to the words "CONSISTENT WITH." But how about the people in the provinces? The last statement of Commissioner Monsod, saying that he has been explaining to the newspapermen, is proof of the fact that even the newspaper people had a different interpretation or understanding of the phrase "CONSISTENT WITH."

THE PRESIDENT: That is always the situation. There can always be different interpretations, but I suppose it is up to the Commissioners, now that we know what it is all about, to explain to the people just what is the truth and intent behind this particular provision. But, of course, Commissioner Monsod is free to pursue any action he desires on this matter.

MS. QUESADA: Madam President.

THE PRESIDENT: Commissioner Quesada is recognized.

MS. QUESADA: May we request that the Commissioners be provided with a complete copy of the transcript of the discussions which took place between Commissioners Monsod and Azcuna.

This is only an excerpt extracted and this does not really give us an idea of what led to the motion for a reconsideration or reservation. For us to be able to really see the intent of the subject under discussion now, we should be provided a copy of this so that we can make a clear decision.

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: Is the Honorable Quesada questioning my right to file a motion for reconsideration?

MS. QUESADA: No, we just want to see the context because the Commissioner has asked for the insertion in the Journal of a portion of the deliberation on this issue but which does not also reflect the other discussions that have been made here.

MR. MONSOD: Madam President, if there is a doubt in the mind of Commissioner Quesada on my right to raise a motion for reconsideration or in the interpretation I have given which I think has been confirmed by Commissioner Azcuna, perhaps there is a need for a vote. Precisely, we are saying that if there is no objection as

to both the motion for reconsideration and in the interpretation of 'CONSISTENT WITH," then it may not be necessary to present this motion.

MS. QUESADA: It is not a question of doubting the Commissioner's right to make a reservation.

THE PRESIDENT: I think Commissioner Quesada would just like to have, more or less, an idea of the conversation

MS. QUESADA: Yes, the one that the Chair read will clarify somehow the discussion that took place between Commissioners Azcuna and Monsod.

MR. MONSOD: Madam President, there are only two issues here.

SUSPENSION OF SESSION

THE PRESIDENT: I am just reading the transcript because it might be of help to us.

The session is suspended.

It was 12:27 p.m.

RESUMPTION OF SESSION

At 12:45 p.m., the session was resumed.

THE PRESIDENT: The session is resumed.

MR. RAMA: Madam President.

THE PRESIDENT: The Floor Leader is recognized.

SUSPENSION OF SESSION

MR. RAMA: Madam President, I move that we suspend the session until two o'clock this afternoon.

THE PRESIDENT: The session is suspended until two o'clock this afternoon.

It was 12:46 p.m.

RESUMPTION OF SESSION

At 2:45 p.m., the session was resumed.

THE PRESIDENT: The session is resumed.

MR. RAMA: Madam President.

THE PRESIDENT: The Floor Leader is recognized.

MR. RAMA: I ask that Commissioner Monsod be recognized.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. RAMA: In the meantime, I ask that the Steering Committee chairman be recognized for the provision on the Article on the Executive.

MR. BENGZON: Madam President.

THE PRESIDENT: Commissioner Bengzon is recognized.

MR. BENGZON: While Commissioner Monsod is still formulating the resolution, may I just respectfully remind our colleagues that today after this discussion here we will reopen the Article on the Judiciary so that we can finalize that particular section which we approved in the Transitory Provisions. It seems that that is the only one that is going to be reopened — the increase of the number of justices from eleven to fifteen. Then we will propose to reopen the Article on the Executive in order to align Section 4 therein with the provision on the election of the President and Vice- President.

In the Legislative Article, the date when the elections are going to be held is spelled out. There is no such statement in the Article on the Executive. We will just realign these two articles.

The last one is the reopening of the Article on the Legislative in view of the clamor of a lot of Commissioners to rethink the decision of the Commission with respect to the election of Congressmen by district and also to have final discussions and a decision on the problem with respect to the Metro Manila area.

THE PRESIDENT: All of these will be accomplished today.

MR. BENGZON: Yes, Madam President, because tomorrow, the Committees on Style and Sponsorship will be on deck and they will present their work to us. So we have to finish this, at least, by seven o'clock.

MS. QUESADA: Madam President.

THE PRESIDENT: Commissioner Quesada is recognized.

MS. QUESADA: May we just ask some enlightenment from the chairman of the Steering Committee. The decision to reopen certain articles has been made by the Steering Committee. So maybe the rest of the Commissioners should be enlightened on what are some of the basic principles or criteria that one would be entitled to reopen certain sections of articles which have already gone through Third Reading.

We in the Committee on Social Justice were just considering the possibility of reopening the article, but it is already a foregone conclusion that it will not be treated favorably, so there is no longer even an attempt to raise this on the floor.

So I am just wondering whether there are considerations like the feedback from the Supreme Court or justices. But should we also consider a principle such as the feedback outside of the four walls of this Commission so that we will have some kind of uniformity in the application of certain rules that we observe here?

MR. BENGZON: Madam President, with respect to the Committees on the Legislative and the Judiciary, each of them presented a petition to the Steering Committee. The Steering Committee in turn circulated a memorandum to all its members attaching therewith the petitions, and the Steering Committee approved the recommendation for the reopening. That is why we have Committee Report Nos. 40 and 41. With respect to the Article on the Executive, it is not really a reopening in the sense that there will be a substantive change but it is only a matter of styling to align the section on the election of the President and Vice-President with the section of the same nature and topic in the Article on the Legislative. These are the only three committees. So in answer to Commissioner Quesada's question, it would depend on what is the ground that would be presented by the committee. The committee involved will have to file that petition, unless it brings the matter to the floor.

THE PRESIDENT: There are certain rules in reopening and this is being sponsored or recommended by the Steering Committee which has to be submitted to a vote. Is it not?

MR. BENGZON: Yes, Madam President. The Steering Committee will deliberate, make its reservation and

present it to the Commission.

THE PRESIDENT: Let us take it one by one. For instance, there is an urgent petition to reopen the Article on the Judiciary and the Steering Committee is endorsing the same, is there no need for the two-thirds vote of the body to approve this?

MR. BENGZON: Precisely, the Steering Committee in its Proposed Resolution No. 41, I believe, is going to present this to the whole Commission. I was just alerting the body that this is what we are going to do. So at the proper time I will stand up and propose to the Commission the approval of Resolution No. 41.

THE PRESIDENT: Yes, let us take it one by one. Is the Commissioner ready to submit it to a vote now?

MS. QUESADA: Madam President.

THE PRESIDENT: Commissioner Quesada is recognized.

MS. QUESADA: Should there not be a sponsor for the reopening, like whoever petitioned the Steering Committee for a reopening of the article, so that we can all be clarified on the extent of the reopening?

THE PRESIDENT: That is why we are taking it one by one.

MS. QUESADA: Yes. So it is not just voting.

MR. BENGZON: Madam President, may I be recognized.

THE PRESIDENT: Commissioner Bengzon is recognized.

MR. BENGZON: I have here Committee Report No. 41 which attaches therewith, and copy of which has been furnished each Commissioner, Petition No. 4 filed by the Committee on the Judiciary. This was circulated to all the members of the Steering Committee and a great majority of the members of the Steering Committee agreed to recommend that the petition of the Committee on the Judiciary be granted. That is why we are now presenting Committee Report No. 41, referring to the petition of the Committee on the Judiciary to the Commission with the recommendation that this be approved. The petition of the Committee on the Judiciary is attached. So all the reasons are there which are recommended by the Steering Committee.

SUSPENSION OF SESSION

THE PRESIDENT: We will suspend the session to accord the Commissioners time to go over Committee Report No. 41 and the attached proposed amendment so that they will be guided in voting.

It was 2:54 p.m.

RESUMPTION OF SESSION

At 3:04 p.m., the session was resumed.

THE PRESIDENT: The session is resumed.

MR. RAMA: Madam President, I ask that the Steering Committee chairman, Commissioner Bengzon, be recognized.

THE PRESIDENT: Commissioner Bengzon is recognized.

MR. BENGZON: Madam President, now that the Commissioners have had a chance to read Committee Report No. 41 of the Steering Committee, together with Petition No. 4 of the Committee on the Judiciary, I would like to

move that this body approve Committee Report No. 41 of the Steering Committee which recommends a discussion of Petition No. 4 of the Committee on the Judiciary.

MR. DE CASTRO: Madam President.

THE PRESIDENT: Commissioner de Castro is recognized.

MR. DE CASTRO: I only would like to ask an information. When we reopen, is it equivalent to a reconsideration?

MR. BENGZON: No, Madam President, the reopening is only for specific purposes, so it is not a reopening of the whole article. So when we reopen, we base on the recommendation of the Steering Committee. The Commission will act on this recommendation of the Steering Committee, and if it approves so, then we will go back to the discussion of those sections which are sought to be discussed.

THE PRESIDENT: Commissioner de Castro, there are specific sections mentioned which are the only ones to be reopened should the body approve this petition to reopen: Sections 3, 7, 10, 13 and 14 of the Article on the Judiciary.

MR. DE CASTRO: That is my inquiry, Madam President. I am aware of that. I am only after the Rules that will govern such reopening. To my interpretation — correct me if I am wrong — this is in the nature of a motion for reconsideration, and when we have a motion for reconsideration, where the time has lapsed, we will eventually land in the suspension of the Rules.

MR. BENGZON: Yes, precisely. If we approve this Committee Report No. 41, it will, in effect, suspend the Rules, Madam President.

THE PRESIDENT: That is why, Commissioner de Castro, we will submit it to a vote. If there is a two-thirds vote of those present, then it is reopened. If we do not get a two-thirds vote, then the petition to reopen is lost.

MR. DE CASTRO: Is it two-thirds vote of those present or two-thirds vote of the membership of the body?

THE PRESIDENT: According to the Rules, two-thirds vote of those present.

MR. DE CASTRO: If it is in the Rules, it is not in our rules.

THE PRESIDENT: Commissioner de Castro, this petition to reopen was coursed through the Steering Committee.

MR. DE CASTRO: I understand, Madam President.

THE PRESIDENT: And the Steering Committee recommends it; otherwise, we would need a unanimous vote to suspend the Rules.

MR. DE CASTRO: So then before we discuss this matter, let us first get a two-thirds vote for the suspension of the Rules.

Thank you, Madam President.

MS. QUESADA: Madam President, therefore, the motion of the chairman of the Steering Committee should not be to consider Committee Report No. 41 but to move for a suspension of the Rules. Is that the effect?

MR. BENGZON: No, Madam President. There is Committee Report No. 41 which is submitted to the body. This endorses with favor Petition No. 4 of the Committee on the Judiciary. If this is approved by the body, then it is equivalent to the suspension of the Rules. That is why we need a two-thirds vote.

THE PRESIDENT: Is that clear, Commissioner Quesada?

Will the Secretary-General please read the title of the petition, the subject of Committee Report No. 41.

THE SECRETARY-GENERAL: Petition No. 4, entitled:

AN URGENT PETITION TO REOPEN SECTIONS 3, 7 10, 11, 13 and 14 OF THE ARTICLE ON THE JUDICIARY.

MR. BENGZON: We are ready to vote.

VOTING

THE PRESIDENT: As many as are in favor of this Committee Report No. 41 which endorses an urgent petition to reopen Sections 3, 7, 10, 11, 13 and 14 of the Article on the Judiciary, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (No Member raised his hand.)

The results show 35 votes in favor and none against; Committee Report No. 41 is approved.

MR. BENGZON: Madam President, may I now, therefore, request that the Chair recognize Commissioner Roberto Concepcion, chairman of the Committee on the Judiciary, to sponsor Petition No. 4.

THE PRESIDENT: Commissioner Concepcion is recognized.

SPONSORSHIP SPEECH OF COMMISSIONER CONCEPCION

MR. CONCEPCION: Thank you, Madam President.

Although the petition requests opportunity to consider certain aspects of several sections, actually there is only one purpose — to take appropriate measures to reasonably ensure that the clogged dockets of the judiciary are resolved. What I mean is that the cases involved be decided and that future delay in the administration of justice be avoided.

Although there is only one purpose, that purpose requires certain adjustments and numbering of sections.

So I will start with the first section, which is Section 3 of the Judiciary Article. Paragraph 1, the present approved draft of the committee, establishes a court of 11 members. To ensure the speedy resolution of the cases pending in the Supreme Court and the many more that are expected to be filed upon the ratification of the Constitution, we are proposing that the membership be increased to 15.

Furthermore, there is an additional adjustment. Instead of having only two divisions, the court is given discretion to sit in divisions of three members, in which case, there would be five divisions or divisions of five members; in which case, there would be three divisions or in divisions of seven members; in which case, there would be only two divisions. The reason being that the nature or gravity of the case might require a lesser or bigger division.

I will read the provision as proposed:

The Supreme Court shall be composed of a Chief Justice and FOURTEEN Associate Justices. It may sit en banc or in ITS DISCRETION, IN DIVISIONS OF THREE, FIVE OR SEVEN MEMBERS. Any vacancy shall be filled within ninety days from the occurrence thereof."

The last sentence is in the provision already approved by the Commission.

MR. DE CASTRO: Madam President.

THE PRESIDENT: Commissioner de Castro is recognized.

MR. DE CASTRO: May I just ask a question of my professor.

MR. CONCEPCION: Certainly, Madam President.

MR. DE CASTRO: Thank you.

When we were discussing this, this is the same number of justices as in the 1973 Constitution. I remember I even asked why we cannot follow the number of justices in the 1973 Constitution. And the reason, according to the committee, then is that this is the recommendation of then Chief Justice Teehankee and that he said 15 is a little unwieldy, resulting to delay in the disposition of cases, and so he thought that 11 will be a better number, not even to mention the economic side of it.

MR. CONCEPCION: That is true.

MR. DE CASTRO: May I know why we are now returning to 15 despite that reason sometime ago when we were discussing the Article on the Judiciary?

THE PRESIDENT: Excuse me. Before the Chief Justice answers, should we not request the chairman and members of the Committee on the Judiciary to please sit at the front table so that Commissioner Concepcion will be seated while answering the questions? We have six sections to discuss.

MR. DE CASTRO: Madam President, I am asking this question just to straighten out our records because I for one was for the 15 when we were discussing this.

MR. CONCEPCION: That is right, and I am glad that the Gentleman asked the question. The reason is that after the approval on Third Reading of the Article on the Judiciary, we have received feedback, principally from the Bar — when I say "the Bar," that includes Members of this Commission, many of whom are lawyers — and they insist that considering the pace at which the Supreme Court has been disposing of cases, it is impossible for the court to eliminate this backlog. So, we had several conferences, one of them with the court itself. Although the Chief Justice did not ask for 15 — actually he would prefer to have 11 — the members of the committee feel that in this matter we cannot take chances. One of the main complaints against the government is the delay in the dispatch of cases. So, the clamor has been that justice delayed is justice denied. Once the Constitution is approved, we cannot approve that measures, and we have to stick to what has been done. And so to obviate that possibility, which is a probability from the viewpoint of our perception, we deemed it best to increase the membership of the court to 15, and to enable the same to operate in several classes in its discretion in decisions.

MR. DE CASTRO: Thank you, Madam President.

MR. CONCEPCION: We also realized that it is difficult for the court to admit that it cannot cope with its job. We realize that. That is very, very human. This is the reason for the increase.

MR. DE CASTRO: Thank you.

I would just like to straighten out the past records.

MR. CONCEPCION: With pleasure.

MR. DE CASTRO: I understand that our justices now in the Supreme Court, together with the Chief Justice, are only 11.

MR. CONCEPCION: Yes.

MR. DE CASTRO: And the second sentence of this subsection reads: "Any vacancy shall be filled within ninety days from the occurrence thereof."

MR. CONCEPCION: That is right.

MR. DE CASTRO: Is this now a mandate to the executive to fill the vacancy?

MR. CONCEPCION: That is right. That is borne out of the fact that in the past 30 years, seldom has the Court had a complete complement.

MR. DE CASTRO: By that time, upon ratification of this Constitution, the Judicial and Bar Council shall be in operation.

MR. CONCEPCION: We hope so.

MR. DE CASTRO: And one of the members thereof is a Member of Congress.

MR. CONCEPCION: That is right.

MR. DE CASTRO: An ex-officio member. By the time this is ratified, Congress is not yet convened and there will still be an election; so there will still be a delay of more than 90 days. Maybe before the vacancies occur in the Supreme Court, they will be filled up by the President.

MR. CONCEPCION: That is possible.

MR. DE CASTRO: Therefore, it will take perhaps until November or December before the four other justices will be appointed, if we follow the Judicial and Bar Council. Or can the Judicial and Bar Council function without the presence yet of a Member of Congress who is an ex-officio member?

MR. CONCEPCION: It can operate without the ex-officio member because a majority would be enough, although it would be preferable if it were complete.

MR. DE CASTRO: So that upon ratification of this Constitution, it is possible, and the President may do it by appointing the members of the Judicial and Bar Council without first a representative from Congress.

MR. CONCEPCION: That is possible.

MR. DE CASTRO: So that we can immediately fill up the four vacancies in the Supreme Court.

MR. CONCEPCION: That is correct.

MR. DE CASTRO: I am asking this just for the record, that the vacancies in the Supreme Court be immediately filled up so that our backlog of cases can be immediately attended to.

Thank you, Madam President.

MR. CONCEPCION: I am glad the Gentleman did so.

THE PRESIDENT: Are there any other comments?

MR. SUAREZ: Madam President.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: I am a member of the committee but I think there is need to clarify certain points, Madam

President.

Let us refer to Section 3, paragraph 1. I think, as envisioned, the Supreme Court composed of 15 associate justices may in its discretion divide itself into divisions of three, five and seven. If it is a division of three, the quorum would be two; if it is a division of five, the quorum would be three; and if it is a division of seven, the quorum would be four. Is my understanding correct, Madam President? This is only for purposes of the record.

MR. CONCEPCION: That is right.

MR. SUAREZ: May I also call our attention to paragraph 3 wherein it is stated that:

Cases of matters heard by a division shall be decided or resolved with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon, and in no case, without the concurrence of at least three of such Members.

The meaning of this provision in relation to Section 3, paragraph 1, would be that if it is a division of three, it would have to be a unanimous vote of the three.

MR. CONCEPCION: That is correct.

MR. SUAREZ: And if it is a division of five, at least three would vote in favor of the decision.

MR. CONCEPCION: That is right.

MR. SUAREZ: And if it is a division of seven, at least four would be in a position to render a decision.

MR. CONCEPCION: Exactly.

MR. SUAREZ: So, the only division that may be affected by paragraph 3 would be a division of three.

MR. CONCEPCION: That is right.

MR. SUAREZ: Thank you, Madam President.

MR. RAMA: Madam President, there are no registered speakers on the amendment. I ask that the amendment be restated for voting.

THE PRESIDENT: Will Commissioner Romulo, the vice-chairman, please read Section 3 with the amendments.

MR. ROMULO: Yes, Madam President. Section 3 (1) reads as follows: "The Supreme Court shall be composed of a Chief Justice and fourteen Associate Justices. It may sit en banc or IN ITS DISCRETION, IN DIVISIONS OF THREE, FIVE, OR SEVEN MEMBERS. ANY VACANCY SHALL BE FILLED WITHIN NINETY DAYS FROM THE OCCURRENCE THEREOF."

MR. RAMA: The body is ready to vote.

VOTING

THE PRESIDENT: As many as are in favor of Section 3 (1) as read, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (No Member raised his hand.)

The results show 34 votes in favor and none against; Section 3 (1) is hereby approved.

MR. RAMA: Madam President, may I ask that Commissioner Bernas be recognized.

THE PRESIDENT: Commissioner Bernas is recognized.

FR. BERNAS: Madam President, just one clarificatory question with respect to paragraph 2. The question touches on the number of votes needed to declare a law or a treaty unconstitutional. I was just going over the Journal when we were discussing the original provision and I seem to get two conflicting answers. Under the original formulation when we had 11, the quorum of a court en banc would have been six and a vote of five would have sufficed to declare a law, treaty or executive order unconstitutional. That was one answer given by Commissioner Concepcion. Later, on July 4, in answer to the same question, it seemed that Commissioner Regalado said that seven votes were needed. I am not too sure now. That was when the number was eleven. So, we could transpose the question now that we have 15.

MR. CONCEPCION: What is the question?

FR. BERNAS: My question is: Under the original formulation, would five votes suffice to declare a law unconstitutional?

MR. CONCEPCION: A majority of those participating will be enough so long as there is a quorum.

FR. BERNAS: That would be true also of the present provision now?

MR. CONCEPCION: Yes, paragraph 2 now is a consolidation of the original paragraphs 2 and 3; there is no more difference.

The reason is that there have been cases in the past where a minority has prevailed over the majority in connection with the declaration of unconstitutionality by reason of the fact that the law at that time required a fixed number of votes for the declaration of unconstitutionality. Now, we have to avoid that. It is often misunderstood by the Philippine Bar and more particularly by the public.

FR. BERNAS: Yes, Madam President. I just raised the question because on July 11, the answer was five and on July 14, the answer was seven.

MR. CONCEPCION: So, right now, there is no problem.

FR. BERNAS: Thank you, Madam President.

THE PRESIDENT: Are there any other comments or questions?

MR. SUAREZ: May we now read the paragraph.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: It would now read: "ALL CASES INVOLVING THE CONSTITUTIONALITY OF A TREATY, INTERNATIONAL OR EXECUTIVE AGREEMENT, OR LAW WHICH SHALL BE HEARD BY THE SUPREME COURT EN BANC, AND ALL OTHER CASES WHICH UNDER THE RULES OF COURT ARE REQUIRED TO BE HEARD EN BANC, INCLUDING THOSE INVOLVING THE CONSTITUTIONALITY, APPLICATION OR OPERATION OF PRESIDENTIAL DECREES, PROCLAMATIONS, ORDERS INSTRUCTIONS, ORDINANCES AND OTHER REGULATIONS, SHALL BE DECIDED WITH THE CONCURRENCE OF A MAJORITY OF THE MEMBERS WHO ACTUALLY TOOK PART IN THE DELIBERATIONS ON THE ISSUES IN THE CASE AND VOTED THEREON."

THE PRESIDENT: Are we ready to vote on this now?

MR. RAMA: Yes, Madam President.

VOTING

THE PRESIDENT: As many as are in favor of Section 3 (2), please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (No Member raised his hand.)

The results show 34 votes in favor and none against; Section 3 (2) is hereby approved.

MR. RAMA: May I ask that Commissioner Suarez be recognized.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: May we request the body to consider Section 3 (3), as amended by the committee, which will read:

CASES OR MATTERS HEARD BY A DIVISION SHALL BE DECIDED OR RESOLVED WITH THE CONCURRENCE OF A MAJORITY OF THE MEMBERS WHO ACTUALLY TOOK PART IN THE DELIBERATIONS ON THE ISSUES IN THE CASE AND VOTED THEREON, AND, IN NO CASE, WITHOUT THE CONCURRENCE OF AT LEAST THREE (3) OF SUCH MEMBERS. WHEN THE REQUIRED NUMBER IS NOT OBTAINED, THE CASE SHALL BE DECIDED EN BANC, PROVIDED, THAT NO DOCTRINE OR PRINCIPLE OF LAW LAID DOWN BY THE COURT IN A DECISION RENDERED EN BANC OR IN DIVISION MAY BE MODIFIED OR REVERSED EXCEPT BY THE COURT SITTING EN BANC .

THE PRESIDENT: Is there a need for any explanation on this?

MR. SUAREZ: The only substantial change or amendment, Madam President, is the substitution of the phrase "participated when the case was submitted for decision" with the phrase "TOOK PART IN THE DELIBERATIONS ON THE ISSUES IN THE CASE AND VOTED THEREON."

And, of course, another amendment is concurrence needed in voting on cases or matters on the division level. That is why the phrase "AND, IN NO CASE, WITHOUT THE CONCURRENCE OF AT LEAST THREE OF SUCH MEMBERS" was added.

MR. RODRIGO: Madam President, may I ask some questions for clarification.

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: Under these provisions, there are three kinds of divisions: one would be a division composed of three justices, in which case there will be five divisions; another division is composed of five justices each, in which case there will be three divisions; and the other is composed of seven members each, in which case, there will be two divisions.

Let us take the smallest division of three and the vote is 2-1. So, it is less than three votes. Should it immediately go to the court en banc of 15 justices or should it first go to a bigger division?

MR. CONCEPCION: Yes.

MR. RODRIGO: They immediately go to the court en banc?

MR. SUAREZ: Yes, Madam President.

MR. RODRIGO: Is that automatic? Let us say that in the division of three, the vote is 2-1, automatically it goes to the court en banc?

MR. SUAREZ: Yes, because the required number of three is not obtained. So, this last phrase would operate automatically — "WHEN THE REQUIRED NUMBER IS NOT OBTAINED, THE CASE SHALL BE DECIDED EN BANC ."

MR. RODRIGO: So, it should not go first to the division of five where possibly three votes might be obtained?

MR. SUAREZ: No more, Madam President, because as outlined in paragraph 1, in the discretion of the Supreme Court, it could divide itself into divisions of three or five or seven. So, if they divide themselves into divisions of three, it would eliminate a theoretical assumption that there would be a division of five or seven.

THE PRESIDENT: Is there any other comment?

Commissioner Maambong is recognized.

MR. MAAMBONG: Just one question of Commissioner Suarez. Is it the intention of this provision, which we have just approved in connection with what we are going to approve later on, that the divisions in the Supreme Court will be on a specialized basis just like in the Court of Appeals where one division is for civil cases, the other is for criminal cases, the other is for special proceedings, and so on? Is that the intention which is not shown in this formulation?

MR. SUAREZ: No, that is not the intention of the committee. The intention is to leave the matter to the discretion of the Supreme Court. And that is so stated in paragraph 1.

MR. MAAMBONG: I see, but I heard the honorable Chief Justice mention earlier that really the increase in number to 15 is to have flexibility in the number of divisions with the ultimate goal of solving the clogging of dockets. I was wondering why we did not just say that it should be in five divisions of three members. In that way, it will be assured that there will really be five divisions working at the same time instead of with seven members wherein there will only be two divisions. Why did we give this kind of flexibility, Madam President?

MR. CONCEPCION: There may be several classes of cases by reason of their gravity. The Supreme Court does not have to organize five divisions of three. It may organize one division of three, another division of five, another division of seven as the demands of public service may appear to them to justify.

MR. MAAMBONG: In other words, to give them more flexibility.

MR. CONCEPCION: That is right.

MR. MAAMBONG: Thank you, Madam President; I am satisfied.

MR. REGALADO: Madam President.

THE PRESIDENT: Commissioner Regalado is recognized.

MR. REGALADO: A point of information because of the point raised by Commissioner Maambong about the former practice in the Intermediate Appellate Court — there being a criminal cases division, special cases division, civil cases division. That has already been eliminated by Executive Order 33 of the President. There are now no specialized divisions.

THE PRESIDENT: Are we ready to vote now? Will Commissioner Suarez read again.

MR. SUAREZ: Thank you, Madam President.

It will read:

CASES OR MATTERS HEARD BY A DIVISION SHALL BE DECIDED OR RESOLVED WITH THE

CONCURRENCE OF A MAJORITY OF THE MEMBERS WHO ACTUALLY TOOK PART IN THE DELIBERATIONS ON THE ISSUES IN THE CASE AND VOTED THEREON, AND, IN NO CASE, WITHOUT THE CONCURRENCE OF AT LEAST THREE (3) OF SUCH MEMBERS. WHEN THE REQUIRED NUMBER IS NOT OBTAINED, THE CASE SHALL BE DECIDED EN BANC; PROVIDED, THAT NO DOCTRINE OR PRINCIPLE OF LAW LAID DOWN BY THE COURT IN A DECISION RENDERED EN BANC OR IN DIVISION MAY BE MODIFIED OR REVERSED EXCEPT BY THE COURT SITTING EN BANC.

VOTING

THE PRESIDENT: As many as are in favor of the amendment, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (No Member raised his hand.)

The results show 34 votes in favor and none against; Section 3 (3) is approved.

MR. RAMA: May I ask that Commissioner Suarez be recognized, Madam President.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: May we request that we now take up Section 7 (2). As proposed to be amended, this will read:

Review, revise, reverse, modify, or affirm on certiorari, as the law or the rules of court may provide, final judgments and decrees of lower courts in:

And that would be continued in Section 7, Madam President. The only suggested amendment is the deletion of the phrase "appeal or in this proposed paragraph.

THE PRESIDENT: Are there any comments?

MR. GUINGONA: Madam President.

THE PRESIDENT: Commissioner Guingona is recognized.

MR. GUINGONA: May I just inquire why "appeal" has been deleted.

MR. CONCEPCION: In the first place, Section 7 is an enumeration of specific powers of the Supreme Court. Paragraph 2 refers to cases to be reviewed by the Supreme Court. The reason for the elimination of "appeal" is this: In the Federal Supreme Court, all cases are taken up on petitions for review. On petition for review, the case need not necessarily be given due course and decided on the merits unless, of course, the issues raised deserve the attention of the court. We feel that insofar as this is concerned, questions of fact need not be reviewed by the Supreme Court. This is part of the set of steps adopted to ensure the speedy disposition of cases by the Supreme Court. At any rate, the importance of the court as such is its doctrinal authority. Insofar as questions of fact are concerned, the court need not pass upon them unless there are certain conditions which amount to lack of jurisdiction, abuse of discretion or excess of jurisdiction. That is why it must be by petition for review on certiorari.

MR. GUINGONA: Except in the cases mentioned by the Gentleman about excess of jurisdiction or lack of jurisdiction, would this particular provision preclude or prohibit a court or the Supreme Court from making any findings of facts?

MR. CONCEPCION: Yes. It relieves the court of the duty to make findings.

MR. GUINGONA: So, it is a definite prohibition.

MR. CONCEPCION: Not a definite prohibition because the court would welcome being relieved of this burden. It is a very tedious thing and, after all, it is a question of appreciation of credibility in which it cannot claim to be in a better position than the lower courts.

MR. GUINGONA: In other words, if the Supreme Court chooses to do so, it may not because of this?

MR. CONCEPCION: Yes. If the Supreme Court chooses to deny the petition for review on certiorari, that is the end of the case.

MR. MAAMBONG: Madam President.

MR. RAMA: Commissioner Maambong wishes to be recognized.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: May I just address my question to Commissioner Regalado. When we say "rules of court" in this Section 7 and the indication is that it is not in capital letters, we are actually referring not to the Rules of Court which was approved in 1964, as amended several times, but we are talking of procedural laws?

MR. REGALADO: No, Madam President. With respect to procedural laws, we already say "AS THE LAW OR RULES OF COURT MAY PROVIDE." The words "RULES OF COURT" are not initially capitalized; that would refer to any rules of court in force at the time. With respect to other procedural laws, we have the phrase "AS THE LAW OR THE RULES OF COURT MAY PROVIDE."

MR. MAAMBONG: May I clarify this further, Madam President. When we say "THE LAW," are we referring for example to the Judiciary Act of 1948, as amended?

MR. REGALADO: Yes, Madam President. There are still some provisions of the Judiciary Act of 1948, as amended, which are still in force complementary to B.P. Blg. 129.

MR. MAAMBONG: All right. Are we also referring to the word "law" when we talk of the Judiciary Reorganization Act which is B.P. Bldg. 129?

MR. REGALADO: Yes, Madam President, because there are provisions there which are procedural in nature and some are jurisdictional in nature.

MR. MAAMBONG: There are so many presidential decrees. The last time I saw a compilation of presidential decrees on remedial law, they have reached around two volumes. Where would they fall? Will they fall under the word "law" or under the "rules of court"?

MR. REGALADO: It would be under "law" because when we speak of "rules of court," there is the participation of the Supreme Court.

MR. MAAMBONG: In other words, to be more specific, when we say "the Rules of Court," we are referring to the Rules of Court of 1964, as amended?

MR. REGALADO: Yes

MR. MAAMBONG: Then why did we not capitalize the letters "r" and "c"?

MR. REGALADO: Because subsequent hereto, there might be another set of rules of court. As a matter of fact, we have started already with the 1985 Rules on Criminal Procedure.

MR. MAAMBONG: And that Rules on Criminal Procedure, including the Rules on Summary Procedure, would fall under the words "rules of court"?

MR. REGALADO: Yes, because the Rules on Summary Procedure and, for that matter, the interim rules and guidelines were prepared by the Supreme Court.

MR. MAAMBONG: Thank you very much, Madam President.

MR. COLAYCO: Madam President.

THE PRESIDENT: Commissioner Colayco is recognized.

MR. COLAYCO: I am a member of the committee but I would like to have a question cleared up by the chairman of the committee.

Section 7, as it was worded before, included the words "appeal or certiorari." I notice that the remedy of "appeal" has been deleted. It is a fundamental principle in the Rules of Court that when the remedy of appeal is granted by the Rules, it cannot be denied. It is a matter of automatic right. It is also fundamental that when the remedy of certiorari is given, it is not a matter of right on the part of the appellant but a matter of discretion on the part of the court.

Under the present law where the accused is convicted and sentenced to reclusion perpetua, it is a matter of right on his part to appeal from the judgment of conviction. Are we to understand now that under this proposed amendment, if he wants to have his sentence reviewed, the court can decide not to accept it?

MR. CONCEPCION: The appellant or the defendant may have to file a petition for review on certiorari.

MR. COLAYCO: But that is still subject to the discretion of the Supreme Court.

MR. CONCEPCION: No. It is not discretion; it is judgment which is different. Petitions for review in all cases of review by certiorari are not a matter of discretion; it is a matter of judgment. A "judgment" is a choice between right and wrong, but "discretion" is a choice between several alternatives, without being wrong in either alternative. It is not a matter of discretion but of judgment.

MR. COLAYCO: What I mean by "discretion is this. . .

MR. CONCEPCION: No, the court may, if in its judgment the case is not worthy of its attention, refuse to give due course to the petition for review on certiorari.

MR. COLAYCO: In other words, treat it like an ordinary petition for certiorari?

MR. CONCEPCION: Yes, An ordinary petition for certiorari is an original action. This is a petition for review on certiorari.

MR. COLAYCO: Under the present Rules, one can appeal from a decision of the Court of Appeals by a petition for certiorari which, however, is not a matter of right on the part of the appellant and one would treat, therefore, under this amendment an appeal from a judgment of conviction sentencing the accused to reclusion perpetua on a similar basis.

MR. CONCEPCION: That is right. In that event, the recourse to the Supreme Court must be by petition for review on certiorari.

MR. COLAYCO: I am clarified and at least I will be guided by the Commissioner's answer in voting for this amendment.

MR. CONCEPCION: Certainly. Remember, this is part of the endeavors to enable the court to clear its docket. But, of course, this does not mean that simply because the court docket is clogged, it may deny due course. It might commit grave abuse of discretion amounting to lack or excess of jurisdiction.

MR. COLAYCO: Would the committee consider a motion to reinstate this remedy? We must remember that there is only one single criminal case of conviction the appeal from which has been left to be a mandatory right on the part of the appellant.

MR. CONCEPCION: Yes, by statute.

MR. COLAYCO: Precisely. But shall we sacrifice even that right for the simple purpose of helping out the Supreme Court clean up its dockets?

MR. CONCEPCION: The laws grant a right of review. But whether it is by appeal or by petition on review, that is a procedural matter.

MR. COLAYCO: I had a little experience in appellate work, and the temptation to dispose of the appeal at a glance where we know that it is not the right of the appellant to make the appeal is very strong. I just would like the committee to take this into account.

MR. CONCEPCION: This is a matter of appreciation by the court. Courts are presided by human beings and no human being is perfect.

MR. COLAYCO: My purpose in bringing this up is to call the attention of the Members of the Commission.

MR. CONCEPCION: must have been a decision of the regional court. Then there is the decision of the Court of Appeals or the Intermediate Court of Appeals.

MR. COLAYCO: But in the case of judgment of conviction sentencing the accused to reclusion perpetua, it goes straight to the Supreme Court, Madam President.

MR. CONCEPCION: That is right. So that means it should go through the Court of Appeals.

MR. COLAYCO: One would have to change the present Rules.

MR. CONCEPCION: That is right. That is why it is made through the Constitution.

SUSPENSION OF SESSION

MR. SUAREZ: Madam President, may we request a suspension of the session?

THE PRESIDENT: The session is suspended for a few minutes.

It was 3:52 p.m.

RESUMPTION OF SESSION

At 3:54 p.m., the session was resumed.

THE PRESIDENT: The session is resumed.

MR. GUINGONA: Madam President.

THE PRESIDENT: Commissioner Guingona is recognized.

MR. GUINGONA: Madam President, I understand that the principal reason for the deletion is to help the

Supreme Court with its present problem of clogging of its docket.

MR. CONCEPCION: That is part.

MR. GUINGONA: Because if that is the only reason . . .

MR. CONCEPCION: No, that is actually not the only reason.

MR. GUINGONA: What would be the other reason, Madam President?

MR. CONCEPCION: That is not the only reason. The principal reason is that a great majority of the appeals are without merit. Of course, the committee is willing to yield that point and restore the appeal; all right, let it be restored, no problem.

MR. GUINGONA: Because if it is without merit, then the Supreme Court can so declare.

MR. CONCEPCION: Yes, of course, but the trouble is that when an appeal is without merit, it has to be given due course; that is the difference.

MR. RAMA: Madam President, I ask that Commissioner Suarez be recognized to clarify the situation.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: Thank you, Madam President.

There is a proposal on the part of Justice Colayco that we restore the use of the phrase "appeal or" in Section 7 (2), and the committee, after reviewing the situation, interpose no objection to the reinstatement of the phrase "appeal or," so we can consider the matter moot and academic, Madam President.

MR. SARMIENTO: Madam President

THE PRESIDENT: Commissioner Sarmiento is recognized.

MR. SARMIENTO: May I address one question to the committee.

In actual practice, we seldom use the word "decrees," referring to final judgments and decisions of lower courts. What we receive are decisions or judgments; we do not receive decrees from lower courts.

So, may I suggest that instead of "decrees" we use "FINAL JUDGMENTS AND DECISIONS."

MR. SUAREZ: Madam President, in land registration cases, there are decrees that are being issued preparatory to the issuance of a Torrens title.

MR. SARMIENTO: So "decrees" do not refer to decisions but decrees issued by CFI acting as land registration courts?

MR. SUAREZ: Substantially, yes, Madam President.

MR. SARMIENTO: So, with that clarification, I am withdrawing my amendment.

MR. SUAREZ: Thank you.

MR. PADILLA: Madam President.

THE PRESIDENT: Commissioner Padilla is recognized.

MR. PADILLA: But even in land registration cases, the judgment of the court is called "decision." After the decision is rendered, then there is what one might call a "decree" leading to the issuance of the title.

I would prefer the words, as suggested by Commissioner Sarmiento, "FINAL JUDGMENTS AND DECISIONS" instead of "decrees."

MR. SUAREZ: I think there is no substantial difference between "judgment" and "decision." That is why the words "judgment" and "decrees" were used separately.

MR. PADILLA: Actually, most of the decisions of the courts, or rather, the judgment after trial or so are called "decisions," although sometimes the word "judgment" is used. But the more usual term for a determination made by a court of justice is a decision.

MR. RAMA: May we hear the committee's position?

MR. SUAREZ: There is no formal motion that has been presented by the Honorable Sarmiento.

MR. RAMA: Is the Gentleman insisting on his motion?

MR. SARMIENTO: Commissioner Padilla and this Representation are respectfully requesting that the committee consider our suggestion that instead of using "decrees," we use the word "DECISIONS." So, we respectfully move that instead of using "decrees," we use the word "DECISIONS," so that line 6 will read: "PROVIDE FINAL JUDGMENTS OR DECISIONS OF LOWER COURTS."

MR. CONCEPCION: May I call attention to the fact that the opinion is generally alluded to as "decisions," but the judgment is the dispositive part.

So, in the municipal court, we simply put "fine so much." That is not a decision; that is a judgment.

THE PRESIDENT: How about the word "decrees"? What does it cover?

MR. CONCEPCION: It is about orders. Instead of "decrees," "ORDERS."

MR. SARMIENTO: Madam President, since "decrees" refer to orders, to avoid misinterpretation or misunderstanding that this has reference to presidential decrees, can we just use the word "ORDERS"?

MR. SUAREZ: Yes.

MR. CONCEPCION: "Orders"; that is it.

MR. SUAREZ: That was the suggestion of the Chief Justice.

MR. RAMA: The body is now ready to vote on the amendment.

MR. LERUM: Madam President, may I be recognized.

THE PRESIDENT: Commissioner Lerum is recognized.

MR. LERUM: I am objecting to the proposed amendment of Commissioner Colayco, which has been accepted by the committee. I am for the retention of the wording of the committee for the reason that if we follow this method again, the backlog of cases in the Supreme Court will remain.

I believe that when a case is filed with the Supreme Court, the Supreme Court should be able to decide right away from the pleadings, whether or not it should be given due course. Because if we get the right to appeal, then we follow the usual procedure. We have to file a brief and all that.

However, if we follow the wording of the committee, the Supreme Court can right away study the case, decide for itself whether it should be given due course or not. If it is not to be given due course, then the court should say so, so that the parties will know right away, instead of waiting for 10 years, 15 years and later on, the appeal will only

be lost. So, I am for the retention of the wording of the committee.

MR. COLAYCO: Madam President.

MR. RAMA: Is the Gentleman filing a motion for reconsideration?

MR. COLAYCO: Madam President.

MR. LERUM: I wanted it to be submitted to a vote.

THE PRESIDENT: Because it has not been approved yet.

MR. SUAREZ: It would have to be submitted to a vote later.

MR. COLAYCO: Madam President.

THE PRESIDENT: Commissioner Colayco is recognized.

MR. COLAYCO: In reply to the comments of Commissioner Lerum, I think he knows that people are not sentenced to life imprisonment everyday. There are very few cases. And remember, when one is sentenced to life imprisonment, some people think they might as well be sentenced to death because languishing in jail for all your life is not a joke.

I would insist that we retain the old rule.

THE PRESIDENT: The word "appeal."

MR. LERUM: May I reply to that. Before dismissing such a petition, it should be studied by the Supreme Court. That is the point. The point is that when a case is brought by certiorari to the Supreme Court, the Supreme Court has all the time to study the petition. And then, if it finds that it is meritorious, then it should be given due course. However, even if the penalty is severe but from the record the Supreme Court will be able to determine for itself that the appeal is without merit, then it should be dismissed right away.

There are a number of labor cases pending in the Supreme Court, mostly filed by management. It will stay there for, say, five years, six years, seventeen years, and then the Supreme Court will say, "Well, back wages for three years only, not more than that."

MR. REGALADO: Madam President.

MR. LERUM: That is the reason for my insistence that the amendment as proposed by the committee should be retained.

MR. REGALADO: Madam President.

THE PRESIDENT: Commissioner Regalado is recognized.

MR. REGALADO: If we go back a little to the 1935 Constitution, the mode of appeal formerly was by certiorari or writ of error. We eliminated the writ of error as a mode of appeal and limited it to certiorari and regular appeal, but with the qualification "as the law or the Rules of Court may provide."

In the process and culminating with Republic Act 5440, almost all cases appealed to the Supreme Court are now appealable only by certiorari. The only two cases left for review by the Supreme Court on regular appeal are those wherein the sentence was reclusion perpetua or, at that time, the death penalty.

It is true that now this will apply only to reclusion perpetua because we have abolished the death penalty. But we have also provided that the death penalty may be restored in cases of heinous crimes. If it is restored, will not the

rule on automatic review quarrel with this provision if it is limited only to certiorari which is discretionary or, in a manner of speaking, not mandatory to be given due course? But there is also the qualification, if Commissioner Lerum is a little worried, in the phrase "as the law or the Rules of Court may provide" and over the years, the law has gradually delimited the exclusive appellate jurisdiction, as I have said, to the point that now it is only cases of death or reclusion perpetua which are within the exclusive appellate jurisdiction of the Supreme Court. So, the matter of labor cases will, I am sure and I believe, still be by the mode of certiorari.

MR. LERUM: That is the point. We have plenty of cases pending there. I have a case there pending for 12 years — no, almost 20 years.

THE PRESIDENT: All right, are we ready now?

MR. LERUM: I insist on my opposition and I want that to be subjected to a vote.

MR. RAMA: The body is ready to vote, Madam President, on the motion to restore the words "or appeal" because they have been deleted by the committee.

THE PRESIDENT: Is that the matter that we will vote upon now?

MR. SUAREZ: No. The parliamentary situation is that the words "appeal or" have already been reinstated pursuant to the Colayco proposal.

THE PRESIDENT: Yes.

MR. SUAREZ: Now, the Honorable Lerum is insisting that they should be deleted. So, that is the motion now under consideration.

VOTING

THE PRESIDENT: So, the motion is to delete the words "appeal or" appearing on line 5, Section 7.

As many as are in favor of the proposal of Commissioner Lerum to delete the words "appeal or," please raise their hand. (Few Members raised their hand.)

As many as are against, please raise their hand. (Several Members raised their hand.)

As many as are abstaining, please raise their hand. (One Member raised his hand.)

The results show 4 votes in favor, 25 votes against and one abstention; the proposed deletion is lost.

Will Commissioner Suarez please read Section 7 (2). read Section 7 (2).

MR. SUAREZ: Thank you, Madam President.

Section 7 (2) as a whole will now read. "REVIEW, REVISE, REVERSE, MODIFY, OR AFFIRM ON APPEAL ON CERTIORARI, AS THE LAW OR THE RULES OF COURT MAY PROVIDE, FINAL JUDGMENTS AND ORDERS OF LOWER COURTS IN:"

VOTING

THE PRESIDENT: As many as are in favor of Section 7 (2), please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (No Member raised his hand.)

The results show 35 votes in favor and none against; Section 7 (2) is approved.

MR. RAMA: May I ask that Commissioner Suarez be recognized on Section 10.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: Thank you, Madam President.

The new Section 10, as proposed to be amended, will now read: "THE MEMBERS OF THE SUPREME COURT AND JUDGES OF LOWER COURTS SHALL HOLD OFFICE DURING GOOD BEHAVIOR UNTIL THEY REACH THE AGE OF SEVENTY YEARS OR BECOME INCAPACITATED TO DISCHARGE THE DUTIES OF THEIR OFFICE. THE SUPREME COURT EN BANC SHALL HAVE THE POWER TO DISCIPLINE JUDGES OF LOWER COURTS, ORDER THEIR DISMISSAL BY A VOTE OF A MAJORITY OF THE MEMBERS WHO ACTUALLY TOOK PART IN THE DELIBERATIONS ON THE ISSUES IN THE CASE AND VOTED THEREON." The amendments would consist in the elimination of the words "plus one" and the substitution of the phrase "participated when the matter was submitted for resolution" with the phrase "TOOK PART IN THE DELIBERATIONS ON THE ISSUES IN THE CASE AND VOTED THEREON."

THE PRESIDENT: Are there any comments?

MR. RAMA: The body is ready to vote, Madam President.

VOTING

THE PRESIDENT: As many as are in favor, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (No Member raised his hand.)

The results show 36 votes in favor and none against; Section 10 is approved.

MR. RAMA: Madam President, I ask that Commissioner Suarez be recognized on Section 11.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: Thank you, Madam President.

As proposed to be amended, Section 11 would read: "THE CONCLUSIONS OF THE SUPREME COURT IN ANY CASE SUBMITTED TO IT FOR DECISION EN BANC OR IN DIVISION SHALL BE REACHED IN CONSULTATION BEFORE THE CASE IS ASSIGNED TO A MEMBER FOR THE WRITING OF THE OPINION OF THE COURT. A CERTIFICATION TO THIS EFFECT SIGNED BY THE CHIEF JUSTICE SHALL BE ISSUED AND A COPY THEREOF ATTACHED TO THE RECORD OF THE CASE AND SERVED UPON THE PARTIES. ANY MEMBER WHO TOOK NO PART OR DISSENTED, OR ABSTAINED FROM A DECISION OR RESOLUTION MUST STATE THE REASON THEREFOR. THE SAME REQUIREMENTS SHALL BE OBSERVED BY ALL LOWER COLLEGIATE COURTS."

The proposed amendment seeks the deletion of the phrase "dissenting or abstaining," and in lieu thereof, the substituted phrase "WHO TOOK NO PART, OR DISSENTED, OR ABSTAINED FROM A DECISION OR RESOLUTION" and then the word "THEREFORE Madam President.

THE PRESIDENT: Are there any comments? Commissioner Guingona is recognized.

MR. GUINGONA: Madam President, may I just inquire where the reason is supposed to be indicated.

Does the reason refer to the certification, Madam President?

MR. CONCEPCION: No. In the decision itself.

MR. GUINGONA: That is it. I am referring now to the first instance where a Member takes no part, where, for example, he takes no part because he is abroad or is hospitalized. I was wondering whether this need not be a personal statement.

MR. CONCEPCION: If he is hospitalized or abroad, it cannot be a personal thing.

MR. GUINGONA: Yes, Madam President. Just for clarification.

MR. CONCEPCION: Generally, the Chief Justice certifies. But as to reasons for an abstention, it is a personalized matter that only the judge concerned may explain it.

MR. GUINGONA: This was an addition, Madam President. Originally, it was only referring to "abstentions;" it was only referring to instances when the justices dissented.

Thank you.

MR. CONCEPCION: It is also one way of seeing to it that all justices participate, because something must be done by the judge who did not take part and the reason for his failure to participate should be so stated. It may be rather awkward for a judge to say that he is abroad. We feel that judges would, in general, prefer to avoid such explanations to appear in many cases. The explanation was required before in case of dissent. Now a judge must state why he took no part, or dissented or abstained.

MR. JAMIR: Madam President, just one question for clarification.

THE PRESIDENT: Commissioner Jamir is recognized.

MR. JAMIR: If the Chief Justice is abroad or is incapacitated from discharging the duties of his office, who will perform the certification?

MR. CONCEPCION: Actually, there is a law to the effect that whenever the Chief Justice is absent, his next in rank performs his duties. That is automatic; the senior Associate Justice takes over.

MR. JAMIR: Is there a rule of court on that matter?

MR. CONCEPCION: No, there is a law to that effect in determining the rank.

MR. JAMIR: Thank you very much.

MR. LERUM: Madam President.

THE PRESIDENT: Commissioner Lerum is recognized.

MR. LERUM: May I be allowed to ask a question.

THE PRESIDENT: Please proceed.

MR. LERUM: As worded, Section 11 says:

The conclusions of the Supreme Court in any case submitted to it for decision en banc or in division shall be reached in consultation before the case is assigned to a Member for the writing of the opinion of the court. A certification to this effect signed by the Chief Justice shall be issued . . .

Does the certification include the fact that certain justices have participated, and to whom the case has been assigned for the writing of the opinion?

MR. CONCEPCION: No.

MR. LERUM: Is this certification different from the decision to be promulgated by the Supreme Court?

MR. CONCEPCION: Yes. That is a certification that must be issued immediately after the deliberation.

MR. LERUM: Thank you.

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: Just a question; will this statement of the reasons why somebody took no part or dissented or abstained be simultaneous with the issuance of the decision?

MR. CONCEPCION: Yes.

MR. RODRIGO: Suppose a justice is abroad and the decision is due for promulgation and the justice stays abroad for a month more?

MR. CONCEPCION: The Chief Justice or Associate Justice will state why he is abroad.

MR. RODRIGO: But here, it is the Member who took no part that should state the reason, not the Chief Justice. It says: "Any Member WHO TOOK NO PART, OR DISSENTED, OR ABSTAINED from a decision OR RESOLUTION must state the reason THEREFORE."

So, it is not the Chief Justice who will state the reason.

MR. CONCEPCION: The committee would welcome the Commissioner's suggestion as to the language.

MR. RODRIGO: I really would not know because before it just applies to Members who dissented or abstained. But the justice who took no part might be abroad or he might be so sick in the hospital that he cannot explain the reason.

MR. BENGZON: Madam President.

MR. CONCEPCION: Would the Commissioner prefer not to state that he is abroad?

MR. RODRIGO: Yes, that can be stated. But the provision says that he is the one who must explain.

MR. CONCEPCION: That is why I am stating that the committee is willing to accept the Commissioner's suggestion. What is the Commissioner's suggestion?

MR. BENGZON: Madam President, may I offer a suggestion.

MR. CONCEPCION: All right.

THE PRESIDENT: Commissioner Bengzon is recognized.

MR. BENGZON: In that particular case, if a justice is out of the country, can we not interpret and read into the record that in such a case, the Chief Justice or whoever is the next ranking justice will certify and state that the reason that particular justice took no part is that he was away. Maybe we can consider that as an interpretation, as an exception to this particular basic rule.

MR. CONCEPCION: The requirement that he should state the reason is that very often some of them are here, but still they do not take part.

MR. RODRIGO: If the member is around, then he can state the reason he did not take part. But how about occasions when a member is out of the country?

MR. CONCEPCION: The Chief Justice can say he cannot certify that a member was not able to participate because he was abroad.

MR. RODRIGO: I am satisfied with that.

THE PRESIDENT: Are we now ready to vote?

MR. SUMULONG: Madam President.

THE PRESIDENT: Commissioner Sumulong is recognized.

MR. SUMULONG: May I direct some questions to the committee, especially to the chairman, Chief Justice Concepcion?

MR. CONCEPCION: Certainly, Madam President.

THE PRESIDENT: The Commissioner will please proceed.

MR. SUMULONG: Section 11 says:

The conclusions of the Supreme Court in any case submitted to it for decision en banc or in division shall be reached in consultation before the case is assigned to a Member for the writing of the opinion of the court . . .

The words "in consultation" make me doubt as to whether or not all the justices will take part in discussing the issues and reaching a decision before selecting the member who will write the opinion of the court.

MR. CONCEPCION: There are those who dissent or abstain, or are abroad.

MR. SUMULONG: Under our Rules of Court and in the Article on the Judiciary that we have approved on Second Reading, a case is submitted for decision in the Supreme Court or in the Court of Appeals when the appellant has filed his reply-brief.

MR. CONCEPCION: That is right.

MR. SUMULONG: Suppose after the reply-brief has been filed with the appellant, the chairman of the division will just call up by phone the other members of the division and ask what they think of the case without any discussion? I am asking this question because there are several occasions where the cases are not discussed by the whole division or by the whole court. They are usually assigned only to one member of the court who just prepares a draft decision and afterwards, when the draft decision is already prepared, he just goes to the other members of the division to secure their concurrence. To make sure that the decision will be that of a collegiate court, can we not make it clearer if instead of the words "in consultation," we substitute the phrase "AFTER DUE DELIBERATION ON THE ISSUES INVOLVED"?

MR. CONCEPCION: That appears in another section which provides that the cases must be decided by a vote of the majority of those who took part in the deliberations and voted thereon.

MR. SUMULONG: That is precisely why I am suggesting that we use the phrase "AFTER DUE DELIBERATION ON THE ISSUES INVOLVED."

MR. CONCEPCION: That is stated in another section.

MR. SUMULONG: In another section but not in this section, Madam President.

MR. CONCEPCION: In other words, they cannot vote if they did not take part in the deliberations.

MR. SUMULONG: The words we used in Section 11 are "in consultation."

MR. CONCEPCION: That is right but that is complemented by the provision that the members cannot vote unless they take part in the deliberations. We cannot put everything in one section.

MR. SUMULONG: Would it not be better if we repeat that phrase here in Section 11 so that we can be sure that when the case is submitted for decision, all the members of the division or the court will meet together as a collegiate court, then deliberate on the issues and reach a conclusion before a member of the court is selected to write the opinion of the court?

SUSPENSION OF SESSION

THE PRESIDENT: The session is suspended for a few minutes.

It was 4:24 p.m.

RESUMPTION OF SESSION

At 4:31 p.m., the session was resumed with the Honorable Jose F .S. Bengzon, Jr. presiding.

THE PRESIDING OFFICER (Mr. Bengzon): The session is resumed.

MR. RAMA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): The Floor Leader is recognized.

MR. RAMA: There has been a reformulation of the provision. May I ask that Commissioner Regalado be recognized.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Regalado is recognized.

MR. REGALADO: We have discussed the point raised by Commissioner Sumulong and we have agreed that the phrase "in consultation," on which he sought a clarification, shall be understood to mean that these justices took part in the deliberations on the issues of the case and we want that to be made of record instead of amending Section 11, because the phrase "took part in the deliberations of the issues in the case" already appears in Section 3 (2) and (3), and also in Section 10. So the phrase "in consultation," appearing on line 17 of page 2, is likewise understood to mean that before a decision or a conclusion of the court shall be submitted for decision, it shall be reached in consultation, meaning, with the participation of the justices involved in the case.

MR. SUMULONG: Mr. Presiding Officer, just not to delay the proceedings, I would agree to that, although I would have preferred that in Section 11 itself, the words "in consultation" should be deleted, and the words substituted should be "AFTER DUE DELIBERATION ON THE ISSUES INVOLVED."

Thank you, Mr. Presiding Officer.

MR. GUINGONA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Guingona is recognized.

MR. GUINGONA: Would the committee have any serious objection to that suggestion, which I was going to propound myself, that we substitute the words "in consultation" with the phrase "AFTER DUE DELIBERATION ON THE ISSUES INVOLVED," in view of the manifestation made by Commissioner Regalado, in order to align this particular section with the other sections that he has referred to?

THE PRESIDING OFFICER (Mr. Bengzon): What does the committee say?

MR. CONCEPCION: I would have no objection. But let us remember that the last sentence of Section 10, which is followed by Section 11, uses that phrase already. And sometimes, repeating the same expression appears a little awkward. But if that is the suggestion, it is all right.

MR. GUINGONA: Precisely, if we change this, there might be some doubts raised because we were talking of "deliberations" in the previous sentence, and then we shift to "consultations" in the second sentence in the next section.

MR. REGALADO: The phrase "in consultation" also appears in the previous Constitutions where it was always understood to mean "AFTER DUE DELIBERATION."

MR. GUINGONA: Yes. But, precisely, the intention of the committee has been to stress the need for deliberations in order to avoid the kind of consultations that the Honorable Commissioner Sumulong has mentioned.

May I propose an amendment, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): What is the amendment of Commissioner Guingona?

MR. GUINGONA: Instead of the words "in consultation," we use the phrase "AFTER DUE DELIBERATION."

THE PRESIDING OFFICER (Mr. Bengzon): That seems to be the proposal of Commissioner Sumulong. Is the Commissioner insisting on that?

MR. GUINGONA: I would like to find out if the committee would accept it and I will appreciate it if so.

MR. REGALADO: The phrase "in consultation" has already a settled meaning, having been used in two previous Constitutions and Commissioner Sumulong is already satisfied that it means "AFTER DUE DELIBERATION."

THE PRESIDING OFFICER (Mr. Bengzon): Is Commissioner Guingona insisting on his amendment?

MR. GUINGONA: I will accept the sense of the committee. And speaking of the sense of the committee, Mr. Presiding Officer, in reply to my inquiry earlier, the Honorable Chief Justice mentioned that as far as the statement on nonparticipation is concerned, that would not necessarily mean a personal statement; it could be done by either the Chief Justice or any other responsible official of the court.

Thank you.

MR. RAMA: Before the committee reads the section for voting I move that we delete the words "TO IT" between the words "SUBMITTED" and "FOR" because it is already obvious that it is submitted to the Supreme Court for decision, so the words "TO IT" will be unnecessary.

THE PRESIDING OFFICER (Mr. Bengzon): The committee chairman is recognized.

MR. SUAREZ: The committee is happy to accept the proposal to delete the words "TO IT."

THE PRESIDING OFFICER (Mr. Bengzon): May we now request the committee through Commissioner Suarez to read the whole section.

MR. SUAREZ: Thank you, Mr. Presiding Officer.

Section 11, as amended, will now read: "THE CONCLUSION OF THE SUPREME COURT IN ANY CASE SUBMITTED FOR DECISION EN BANC OR IN DIVISION SHALL BE REACHED IN CONSULTATION BEFORE THE CASE IS ASSIGNED TO A MEMBER FOR THE WRITING OF THE OPINION OF THE COURT. A CERTIFICATION TO THIS EFFECT SIGNED BY THE CHIEF JUSTICE SHALL BE ISSUED AND A COPY THEREOF ATTACHED TO THE RECORD OF THE CASE AND SERVED UPON THE

PARTIES. ANY MEMBER WHO TOOK NO PART OR DISSENTED, OR ABSTAINED FROM A DECISION OR RESOLUTION MUST STATE THE REASON THEREFOR. THE SAME REQUIREMENTS SHALL BE OBSERVED BY ALL LOWER COLLEGIATE COURTS."

THE PRESIDING OFFICER (Mr. Bengzon): Is there any objection? (Silence) The Chair hears none; the section is approved.

MR. RAMA: May I ask that Commissioner Suarez be recognized on Section 13.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Suarez is recognized.

MR. SUAREZ: Thank you, Mr. Presiding Officer.

We would like to state at the outset that the committee is seeking *motu proprio* the deletion of the second sentence of Section 13 for the reason that the same had already been approved in the Committee on Transitory Provisions governing the proposed salaries for the position of Chief Justice and the positions of the associate justices of the Supreme Court. So, as proposed, Section 13 will only consist of one sentence and it will read: "THE SALARY OF THE CHIEF JUSTICE AND OF THE ASSOCIATE JUSTICES OF THE SUPREME COURT, AND OF JUDGES OF LOWER COURTS SHALL BE FIXED BY LAW."

As I have already stated into the records, Mr. Presiding Officer, my understanding is that the starting salaries of the Chief Justice and the associate justices under the new Constitution shall be those provided and existing under the Article on Transitory Provisions. That is to say, the starting salary for the Chief Justice of the Supreme Court would be P240,000 annually, and for the associate justices of the Supreme Court, P204,000 annually or P17,000 monthly, until Congress shall provide otherwise.

THE PRESIDING OFFICER (Mr. Bengzon): The Chair would like to seek clarification from the committee. The Chair seems to remember that when the chairman of the Committee on Transitory Provisions was explaining this point during the deliberations of that article, the Chair understood that this matter of salaries will be discussed in the Article on Transitory Provisions, after which, whatever decision will be taken, the different figures will be distributed into the body of the various articles concerned. Is that not what the understanding of the Commission was?

MR. SUAREZ: The Chair's understanding is substantially correct that is why the committee is now proposing that instead of incorporating the approved transitory provision into that committee, we should let it remain there and delete the second sentence of Section 13.

THE PRESIDING OFFICER (Mr. Bengzon): Would it not be necessary in view of that decision to revise the second sentence to state specifically in the body of this article the salary of the Chief Justice and the associate justices?

MR. SUAREZ: I think there is no need because the body had already voted on the amount allocated for those two positions, Mr. Presiding Officer.

MR. MONSOD: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Monsod is recognized.

MR. MONSOD: I just want to inform the Chair that a few days ago there was a resolution which I think mentioned that we will not put figures in the body of the Constitution because they become obsolete within a certain number of years. So what we put here is the phrase "shall be provided by law" and we stated the starting salaries in the Transitory Provisions. I think that issue has been resolved and is in the records.

VOTING

THE PRESIDING OFFICER (Mr. Bengzon): The Chair has been clarified.

As many as are in favor of Section 13, as amended, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (No Member raised his hand.)

The results show 28 votes in favor and none against Section 13, as amended, is approved.

MR. MAAMBONG: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Maambong is recognized.

MR. MAAMBONG: I hope the committee will not mind a very, very minor clarification. We have approved Sections 7 and 11. I notice that in Section 7, referring to the lower courts, we use the words "FINAL JUDGMENTS AND ORDERS." In Section 11, we are using the words "DECISIONS OR RESOLUTION." I just want to find out from the committee if these are interchangeable terms. For example, may a lower court use the term "DECISION OR RESOLUTION"?

MR. ROMULO: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Romulo is recognized.

MR. ROMULO: Section 11 deals with collegiate courts, whereas Section 7 refers to lower courts. So, the terms are not interchangeable.

MR. MAAMBONG: Precisely, but this is a very academic discussion anyway. What I am saying is that if a lower court issues a judgment and then the judge calls it a decision or a resolution, would that be all right?

MR. ROMULO: Yes.

MR. MAAMBONG: It is a fact that judges do it.

MR. ROMULO: Yes, I suppose so.

MR. MAAMBONG: In other words, we can interchange the words decision, resolution, judgment and orders?

MR. REGALADO: If I may have to be technical about Section 7, we make a distinction between a judgment and a decision. A judgment is only a part of the decision. A judgment is the decretal portion or the dispositive portion, that is why we used that phrase in Section 7 for purposes of appealability because strictly speaking, one does not appeal from a decision. He appeals from a judgment. On the other hand, in Section 11, we used decision or resolution, meaning, the entire document from which anybody may have dissented not only with respect to the judgment, but to the statement of facts and the ratio decidendi therein.

MR. MAAMBONG: Yes, that has been explained by the Chief Justice earlier. So, let us try to capsulize all these things. As far as lower courts are concerned, technically speaking, the lower courts will use the phrase "FINAL JUDGMENTS AND ORDERS." In the case of the appellate court, it will use "DECISION OR RESOLUTION." Is that correct, Mr. Presiding Officer?

MR. ROMULO: Yes.

MR. MAAMBONG: Thank you.

THE PRESIDING OFFICER (Mr. Bengzon): The Floor Leader is recognized.

MR. RAMA: I ask that Commissioner Suarez be recognized on Section 14.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Suarez is recognized.

MR. SUAREZ: Thank you, Mr. Presiding Officer.

May we now go to proposed Section 14, as amended. Section 14 (3) would read: "UPON EXPIRATION OF THE CORRESPONDING PERIOD, A CERTIFICATION TO THIS EFFECT SIGNED BY THE CHIEF JUSTICE OR THE PRESIDING JUDGE SHALL FORTHWITH BE ISSUED AND A COPY THEREOF ATTACHED TO THE RECORD OF THE CASE OR MATTER, AND SERVED UPON THE PARTIES. THE CERTIFICATION SHALL STATE WHY A DECISION OR RESOLUTION HAS NOT BEEN RENDERED OR ISSUED WITHIN SAID PERIOD."

The second sentence is the addition to the original proposal, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): Are there any comments?

MR. RAMA: There are no registered speakers so we ask for a vote.

VOTING

THE PRESIDING OFFICER (Mr. Bengzon): As many as are in favor, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (No Member raised his hand.)

The results show 28 votes in favor and none against; Section 14 (3) is approved.

Do we have any other proposed amendments? It looks like that is the end of Petition No. 4.

MR. RAMA: Yes.

May I ask that Commissioner Suarez be recognized.

MR. SUAREZ: Thank you.

Section 14 (4) is the introduction of a new section, and it will read: "DESPITE THE EXPIRATION OF THE APPLICABLE MANDATORY PERIOD, THE COURT, WITHOUT PREJUDICE TO SUCH RESPONSIBILITY, IF ANY, AS MAY HAVE BEEN INCURRED IN CONSEQUENCE THEREOF, SHALL DECIDE OR RESOLVE THE CASE OR MATTER SUBMITTED THERETO FOR DETERMINATION, WITHOUT FURTHER DELAY."

VOTING

THE PRESIDING OFFICER (Mr. Bengzon): Are there any comments?

As many as are in favor, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (No Member raised his hand.)

The results show 28 votes in favor and none against; Section 14 (4) is approved.

MR. LERUM: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Lerum is recognized.

MR. LERUM: I move to reconsider the approval of the section in order for me to introduce an amendment by deleting the words "IF ANY" on line 8 of the amendment. I believe that this portion is not necessary because it will in effect dilute the responsibility of the justices concerned.

I, therefore, move for the deletion of the words "IF ANY."

MR. SUAREZ: The committee accepts it.

VOTING

THE PRESIDING OFFICER (Mr. Bengzon): All right, so just for technicality, let us vote on the reconsideration.

As many as are in favor of the reconsideration, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (No Member raised his hand.)

The results show 31 votes in favor and none against; the reconsideration is approved.

May we have the amendment of Commissioner Lerum.

MR. LERUM: Mr. Presiding Officer, I move to delete the words "IF ANY" and the commas (,) before and after the said words on line 8 of page 3.

THE PRESIDING OFFICER (Mr. Bengzon): What does the committee say?

MR. SUAREZ: The amendment is accepted, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): Is there any objection? (Silence) The Chair hears none, the amendment is approved.

Will Commissioner Suarez please reread the section.

MR. SUAREZ: It will now read: "DESPITE THE EXPIRATION OF THE APPLICABLE MANDATORY PERIOD, THE COURT, WITHOUT PREJUDICE TO SUCH RESPONSIBILITY AS MAY HAVE BEEN INCURRED IN CONSEQUENCE THEREOF, SHALL DECIDE OR RESOLVE THE CASE OR MATTER SUBMITTED THERETO FOR DETERMINATION, WITHOUT FURTHER DELAY."

THE PRESIDING OFFICER (Mr. Bengzon): Is there any objection to this section, as amended? (Silence) The Chair hears none; the section, as amended, is approved.

Do we have any more proposed amendments?

APPROVAL OF THE ARTICLE ON THE JUDICIARY ON SECOND READING

MR. RAMA: Since there are no more proposed amendments, I move that we approve on Second Reading the Article on the Judiciary, as amended.

THE PRESIDING OFFICER (Mr. Bengzon): As many as are in favor of the Article on the Judiciary, as amended, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (No Member raised his hand.)

The results show 32 votes in favor and none against; the Article on the Judiciary, as amended, is approved on Second Reading.

The Floor Leader is recognized.

MR. RAMA: Mr. Presiding Officer, under the suspended Rules we can proceed to Third Reading on the entire Article on the Judiciary.

I move that we vote on Third Reading on the entire Article on the Judiciary.

THE PRESIDING OFFICER (Mr. Bengzon): Is there any objection? (Silence) The Chair hears none; the motion is approved.

Voting on the entire article on Third Reading is, therefore, in order.

MR. RODRIGO: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Rodrigo is recognized.

MR. RODRIGO: In fairness to some Members who did not expect to have a nominal voting on the reopened Article on the Judiciary on Third Reading, I suggest that we first ring the bell to call back some Commissioners.

THE PRESIDING OFFICER (Mr. Bengzon): May we request that the bell be rung.

MR. RAMA: Mr. Presiding Officer, in the meantime that we are waiting for some of the Commissioners, may I ask that Commissioner Monsod be recognized.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Monsod is recognized.

MR. MONSOD: Mr. Presiding Officer, this morning we recessed for lunch with an outstanding matter on the floor. I just wanted to inform the body that we now have a resolution jointly drafted by Commissioners Jamir, Azcuna, Romulo, Suarez, Ople and this Representation that we hope will put to rest the matter discussed this morning on Section 7 of the Declaration of Principles, and I would like to read the resolution.

THE PRESIDING OFFICER (Mr. Bengzon): The Commissioner will please go ahead.

MR. MONSOD: The joint resolution reads:

Resolved that since it is the intent and sense of the Constitutional Commission that the phrase "consistent with the national interest" in Section 7 of the Article on the Declaration of Principles involving the policy on nuclear weapons in Philippine territory also means "subject to the national interest" as borne by the records of the proceedings and the unanimous manifestation of the Members of the Commission, the motion to reconsider and amend such provision filed by 28 Commissioners is deemed unnecessary and withdrawn from further consideration but is hereby incorporated in the records of the Commission.

Those who had signed the original motion and by inference also this resolution are Commissioners Ople, Calderon, Rigos, Tingson, Davide, Nieva, Romulo, Bengzon, Padilla, Natividad, de Castro, Treñas, de los Reyes, Rodrigo, Regalado, Bacani, Colayco, Jamir, Guingona, Foz, Alonto, Uka, Abubakar, Laurel, Rama, Rosario Braid, Lerum, Villegas and this Representation.

May we ask the Chair to ask for the decision of the body on this resolution.

MR. RAMA: The body is ready to vote.

VOTING

THE PRESIDING OFFICER (Mr. Bengzon): The proposed resolution has been read.

Is there any comment on this resolution? (Silence) The Chair hears none; the body is now ready to vote.

As many as are in favor of the joint resolution, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (No Member raised his hand.)

The results show 34 votes in favor and none against; the joint resolution is approved.

MR. MONSOD: Mr. Presiding Officer, there are just two minor matters which are outstanding and maybe I should ask Commissioners Sarmiento and Quesada to explain them so that we can close the discussions on this matter.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Sarmiento is recognized.

MR. SARMIENTO: Thank you, Mr. Presiding Officer.

Consistent with this Commission's interest and after matters have been clarified, may I withdraw my remarks, if ever I made those remarks, that Commissioner Monsod, in making his motion, was out of order.

THE PRESIDING OFFICER (Mr. Bengzon): Let those remarks be withdrawn.

Commissioner Quesada is recognized.

MS. QUESADA: Mr. Presiding Officer, I have been clarified, after consultation with President Muñoz Palma, on the query I made this morning. So I withdraw my request for a copy of the minutes of the deliberation.

THE PRESIDING OFFICER (Mr. Bengzon): Let it be so recorded.

NOMINAL VOTING ON PETITION NO. 4
ON THE REOPENED ARTICLE ON THE JUDICIARY
(Reopening Sections 3, 7, 10, 11, 13 and 14
of the Article on the Judiciary)

MR. RAMA: I reiterate my motion that we vote on Petition No. 4 on the reopened Article on the Judiciary.

THE PRESIDING OFFICER (Mr. Bengzon): Is there any objection? (Silence) The Chair hears none; the motion is approved.

Voting on the petition is, therefore, in order.

The Secretary-General will read the title of the Petition.

THE SECRETARY-GENERAL: Petition No. 4, entitled:

AN URGENT PETITION TO REOPEN SECTIONS 3, 7, 10, 11, 13 AND 14 OF THE ARTICLE ON THE JUDICIARY.

FIRST ROLL CALL

THE PRESIDING OFFICER (Mr. Bengzon): The body will now vote on this petition, and the Secretary-General will call the roll.

THE SECRETARY-GENERAL, reading:

Abubakar

Natividad

Alonto Nieva Yes

Aquino Yes Nollado

Azcuna Yes Ople
Bacani Yes Padilla Yes
Bengzon Yes Quesada Yes
Bennagen Yes Rama Yes
Bernas Yes Regalado Yes
Rosario Braid Yes Reyes de los
Calderon Rigos Yes
Castro de Yes Rodrigo Yes
Colayco Yes Romulo Yes
Concepcion Rosales
Davide Yes Sarmiento Yes
Foz Suarez Yes
Garcia Yes Sumulong Yes
Gascon Yes Tadeo Yes
Guingona Yes Tan Yes
Jamir Yes Tingson Yes
Laurel Treñas Yes
Lerum Yes Uka Yes
Maambong Yes Villacorta Yes
Monsod Yes Villegas Yes
Muñoz Palma Yes

SECOND ROLL CALL

THE PRESIDING OFFICER (Mr. Bengzon): The Secretary-General will conduct a second call for those who have not registered their votes.

THE SECRETARY-GENERAL, reading:

Abubakar
Natividad
Alonto Nollado
Calderon Ople
Concepcion Reyes de los
Foz Rosales

Laurel

APPROVAL OF PETITION NO. 4 ON THE
REOPENED ARTICLE ON THE JUDICIARY ON THIRD READING
(Reopening Sections 3, 7, 10, 11, 13 and 14 of the Article on the Judiciary)

THE PRESIDING OFFICER (Mr. Bengzon): The results show 36 votes in favor and none against; Petition No. 4 is approved.

At this juncture, the Honorable Bengzon relinquished the Chair to the Honorable Jose C . Colayco.

MR. RAMA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Colayco): The Floor Leader is recognized.

MR. RAMA: I ask that Commissioner Bengzon be recognized.

THE PRESIDING OFFICER (Mr. Colayco): Commissioner Bengzon is recognized.

MR. BENGZON: Mr. Presiding Officer, may I invite the attention of the Commissioners on page 2, Section 4 of the printed copy of the Article on the Executive and on page 3, Section 8 of the mimeographed copy of the Article on the Legislative. It will be noticed that Section 8 of the Article on the Legislative states:

Unless otherwise provided by law, the regular election of Senators and Members of the House of Representatives shall be held on the second Monday of May.

So, the election of the Members of Congress will be held on the second Monday of May. However, no such statement appears in the Article on the Executive with respect to the election of the President and the Vice-President. On this basis, therefore, just to be able to insert in Section 4 of the Article on the Executive which will thereafter be sponsored by the chairman of the Committee on the Executive, I move with the unanimous consent of this body that the Article on the Executive be reopened solely for the purpose of stating a sentence that the election of the President and the Vice-President will likewise take place on the second Monday of May.

THE PRESIDING OFFICER (Mr. Colayco): Is there any objection? (Silence) The Chair hears none; the motion is approved.

MR. BENGZON: May I now request that Commissioner Sumulong be recognized to sponsor.

MR. SUMULONG: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Colayco): Commissioner Sumulong is recognized. He may now proceed.

MR. SUMULONG: In behalf of the Committee on the Executive, we propose that between the first and second paragraphs of Section 4, the following phrase be inserted: "UNLESS OTHERWISE PROVIDED BY LAW, THE REGULAR ELECTION FOR PRESIDENT AND VICE-PRESIDENT SHALL BE HELD ON THE SECOND MONDAY OF MAY."

MR. RAMA: Mr. Presiding Officer, I move that we take a vote if there is no objection from the body.

MR. SUMULONG: Another amendment we are proposing is: on Section 4, the first sentence which reads: "The President shall be elected by a direct vote of the people for a term of six years" should be changed to: "The President AND THE VICE-PRESIDENT shall be elected by a direct vote of the people for a term of six years."

MR. BENGZON: May we vote on the first amendment, Mr. Presiding Officer.

VOTING

THE PRESIDING OFFICER (Mr. Colayco): As many as are in favor of the first amendment, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand (No Member raised his hand.)

The results show 27 votes in favor and none against; the amendment is approved.

MR. SUMULONG: May we have a vote on the second amendment.

MR. BENGZON: Will the Commissioner please read again the second amendment for the convenience of everyone.

MR. SUMULONG: The amendment is to add the words "AND THE VICE-PRESIDENT" to the first sentence of Section 4 so that it will read as follows: "The President AND THE VICE-PRESIDENT shall be elected by direct vote of the people for a term of six years."

VOTING

THE PRESIDING OFFICER (Mr. Colayco): As many as are in favor of the second amendment, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (No Member raised his hand.)

The results show 30 votes in favor and none against; the second amendment is approved.

MR. MONSOD: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Colayco): Commissioner Monsod is recognized.

MR. SUMULONG: May we now ask that the Article on the Executive, together with the amendments just approved by this body, be approved on Third Reading.

MR. BENGZON: Let us vote on the article on Second Reading first.

MR. MONSOD: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Colayco): Commissioner Monsod is recognized.

MR. MONSOD: Just a parliamentary inquiry, Mr. Presiding Officer. I understand that the Rules says that we would require a two-thirds vote and I understand that what happened was just a question of whether there are any objections.

Just as a correct procedure, should we not have voted on a two-thirds vote because this should be suspension of the Rules?

MR. BENGZON: Mr. Presiding Officer, may I answer. I asked for a unanimous consent and the Chair called for objections. There were no objections; therefore, there was unanimous consent. It was not just two-thirds vote; we had the unanimous consent to reopen the Article on the Executive.

THE PRESIDING OFFICER (Mr. Colayco): Does Commissioner Monsod insist on formal voting?

MR. MONSOD: Was the vote endorsed by the Steering Committee, Mr. Presiding Officer?

THE PRESIDING OFFICER (Mr. Colayco): The Chair believes so.

MR. BENGZON: That is precisely why I asked for a unanimous consent because there is no committee report from the Steering Committee.

MR. MONSOD: I believe that if we take a look at the records or the Rules, there is only one way to suspend the Rules and it is through the committee and after a two-thirds vote. I understand that there is no rule on unanimous vote in order to suspend the Rules.

MR. BENGZON: Under the Rules, Mr. Presiding Officer, if it is recommended officially by the Steering Committee, we could take a two-thirds vote. But there is no official written endorsement by the Steering Committee. Then it is by unanimous consent. Those are the Rules of the Constitutional Commission which are suppletory in character.

THE PRESIDING OFFICER (Mr. Colayco): That has been the understanding of the Chair.

MR. BENGZON: In my capacity as chairman of the Steering Committee, I did not stand here representing the Steering Committee; I stood here as a Member of this body. So I asked for a unanimous consent and there was no objection.

MR. MONSOD: I just wanted to take a look at the Rules because I do not believe that is in the Rules. But anyway, I would suggest that we correct it by just voting on this.

I have another question, Mr. Presiding Officer, in that connection. Do I understand that the Article on the Executive has now been reopened?

THE PRESIDING OFFICER (Mr. Colayco): What does Commissioner Bengzon say?

MR. BENGZON: In my request for unanimous consent, I only intended to reopen it for the purpose of accommodating the amendment which was just approved.

So my interpretation there is that unless the body says otherwise, the reopening was only for that purpose.

MR. MONSOD: I believe that once it has been reopened, then we are free to propose amendments. I do not know if there was an explicit bill of particulars, but I had made a manifestation a couple of months back on the idea of rediscussing the question of prohibition on reelection of the President. I think it is on record, Mr. Presiding Officer, that I asked that there be a reservation on reviewing this once we have taken a look at the entire Constitution.

I just wanted to ask if this is the proper time for that or if there is another time in which that issue can be discussed.

MR. BENGZON: I think this is the proper time. If Commissioner Monsod wishes to reopen that particular point, then he can file a motion to that effect by requesting unanimous consent, and I am not going to stand in his way.

MR. MONSOD: In that case, can we just reserve it because I believe I am not ready to make my representation? Can we just reserve it?

THE PRESIDING OFFICER (Mr. Colayco): No, but we can act on the first issue the Commissioner raised, which is to put to a formal vote the motion for suspension of Rules.

MR. MONSOD: Yes, and then at that point, it would be open to amendments, and I would like to make a reservation — even after Second Reading, we can make a reservation — to rediscuss that point for a possible amendment. Would that be possible, Mr. Presiding Officer?

THE PRESIDING OFFICER (Mr. Colayco): What particular point is the Commissioner referring to?

MR. MONSOD: The question of reelection of the President and the Vice-President.

THE PRESIDING OFFICER (Mr. Colayco): The Chair is not in a position to answer that problem right away, and if it can wait for a ruling on the part of the Chair, we can proceed to the next issue which has been raised by Commissioner Bengzon.

MR. MONSOD: I submit to the Chair. All I am saying is, I just do not want to be ruled out on a technicality, but I need not discuss it.

THE PRESIDING OFFICER (Mr. Colayco): All right, it is made of record that the Commissioner has made that reservation.

MR. BENZON: Mr. Presiding-Officer, insofar as I am concerned, the parliamentary situation is that the Article on the Executive has been reopened only for this purpose, and the body has voted on that.

If Commissioner Monsod wishes to reopen that particular section in this article prohibiting the immediate reelection of the President, I suggest that he now file that motion asking for the unanimous consent. We will vote on it but if he is not ready, then we will suspend. But we cannot go to the Second or Third Reading of this Article on the Executive until after we have disposed of his request.

THE PRESIDING OFFICER (Mr. Colayco): Let us first put to a formal vote the motion for suspension of the Rules.

MR. DE CASTRO: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Colayco): Commissioner de Castro is recognized.

MR. DE CASTRO: I understand that the reservation of Commissioner Monsod is made of record. What is that reservation? Is it to reopen the question on the reelection of the President?

THE PRESIDING OFFICER (Mr. Colayco): Will Commissioner Monsod answer the question.

MR. MONSOD: Mr. Presiding Officer, it was in the course of the remarks I made that I would like to ask for reconsideration of the prohibition on reelection of the President. But in our caucus, it was clarified that it was not necessary at that time to do it because we can do it when we take a look at the entire Constitution, in the context of the prohibitions or limitations of the executive because it was in that context that I raised it. I felt that the Chief Executive has been diluted and may not have enough political leverage to deal with Congress. That was the context, Mr. Presiding Officer.

MR. DE CASTRO: If that is the nature of the reservation of Honorable Monsod, then that will take a suspension of the Rules.

So, the reservation made by Commissioner Monsod and accepted by the Chair should be subject to the suspension of the Rules.

THE PRESIDING OFFICER (Mr. Colayco): That is correct.

MR. MONSOD: I agree, although there is one more issue there that is why I wanted a resolution. I understand from Commissioner Bengzon that he asked for a suspension of the Rules to consider specific items. That I suppose is in order: There can be a reopener on the basis of a specific bill of particulars.

So, my question is: Does this foreclose my remarks or reservations before? Do I have to wait for another reopener or can this now be done under this reopener?

THE PRESIDING OFFICER (Mr. Colayco): On the same article?

MR. MONSOD: Yes, Mr. Presiding Officer.

MR. BENGZON: I believe that, as I said, he can now file a motion to reopen this article on that purpose.

SUSPENSION OF SESSION

MR. MONSOD: May we have a suspension of the session, Mr. Presiding Officer?

THE PRESIDING OFFICER (Mr. Colayco): The session is suspended.

It was 5:16 p.m.

RESUMPTION OF SESSION

At 5:17 p.m., the session was resumed.

THE PRESIDING OFFICER (Mr. Colayco): The session is resumed.

MR. BENGZON: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Colayco): Commissioner Bengzon is recognized.

MR. BENGZON: Mr. Presiding Officer, Commissioner Monsod is right in that he had made a previous reservation. Therefore, there is no need for him to seek the consent of the body to reopen the article because he had made a timely reservation unlike in my case where I really needed to ask for a unanimous consent which was granted. Therefore, in his case since he has made that reservation, then the field is open for him.

MR. DE CASTRO: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Colayco): Commissioner de Castro is recognized.

MR. DE CASTRO: I would like to see the records whether that reservation was made on time, in accordance with our Rules. Otherwise, whatever reconsideration he will ask now will mean the suspension of the Rules.

MR. PADILLA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Colayco): The Vice-President is recognized.

MR. PADILLA: In the event that there is some suspension of the Rules and the provision on the Article on the Executive is reopened, can a proposal be made to reconsider the suspension of the writ of habeas corpus to insert therein the phrase "imminent danger of rebellion or invasion"?

THE PRESIDING OFFICER (Mr. Colayco): If the motion for-suspension of the Rules does not specify any particular section of the article, I suppose my own opinion would be that the whole article will be open for review.

MR. PADILLA: I hope so, Mr. Presiding Officer, because it would be, I think, unsatisfactory to limit the occasions or the reasons or causes for the suspension of the writ of habeas corpus to actual invasion or rebellion. The words "imminent danger" were recognized in the two previous Constitutions and I recall that when I was trying to insert the phrase "imminent danger thereof," meaning, imminent danger of invasion or rebellion, I was prevented at that time on the excuse or the reason that the provision in the Bill of Rights on the suspension of the writ had been previously decided without that phrase "imminent danger thereof".

THE PRESIDING OFFICER (Mr. Colayco): The Chair wants to know from Commissioner Bengzon if his motion

to suspend the Rules covers the entire article or only specific sections thereof.

MR. BENGZON: My motion for suspension of the Rules was only for a specific purpose. It does not cover the entire article. Precisely, there are two types of reopening an article: a general reopening or a reopening for a specific purpose. I did not opt for a general reopening because I did not want it. I just wanted to reopen it for a specific purpose.

THE PRESIDING OFFICER (Mr. Colayco): The Chair is satisfied.

Commissioner Jamir is recognized.

MR. JAMIR: Mr. Presiding Officer. I would like to inform the body that Commissioner Monsod's reservation was really made before the Second Reading. In fact, that was the reason my amendment to include in the Article on the Executive the eligibility of the Vice-President for reelection was delayed and, in fact, that was the last amendment approved by this body with respect to the Article on the Executive because of that reservation of Commissioner Monsod. So I just want to make this clear in the record.

THE PRESIDING OFFICER (Mr. Colayco): Let us first proceed with the formalization of the vote on the motion of Commissioner Bengzon for the suspension of the Rules with regard to certain sections of the Article on the Executive.

MR. SUAREZ: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Colayco): Commissioner Suarez is recognized.

MR. SUAREZ: Thank you.

Will the Chairman of the Steering Committee accept an amendment to his proposal so that we can take the case of Commissioner Padilla who, I think, wants to put in some proposed amendment? This humble Representation would also like to put in another amendment. Can we make it a full-blown lifting of the suspension of the Rules without the limitations, Mr. Presiding Officer?

THE PRESIDING OFFICER (Mr. Colayco): The Chair believes that aside from the fact that we are practically on the last stretch of our work, the movant must give strong reasons for his motion covering the particular section of his motion so that the body can vote knowledgeably whether to approve or deny it.

MR. SUAREZ: So, may I formalize my motion.

THE PRESIDING OFFICER (Mr. Colayco): No, let us first vote on the standing motion. Let us clarify what sections are covered by the Commissioner's motion.

MR. BENGZON: Mr. Presiding Officer, the whole thing is finished insofar as I am concerned. We already approved that.

THE PRESIDING OFFICER (Mr. Colayco): The Chair knows, but there was that particular question raised by Commissioner Monsod, unless he is willing to withdraw his reservations.

MR. MONSOD: I accept the ruling of the Chair that in the case of the amendments proposed by Commissioner Bengzon in the Committee on the Executive, the suspension of the Rules was for a specific bill of particulars which has already been voted and, therefore, the suspension of the Rules having been accomplished, I withdraw my motion.

MR. BENGZON: Therefore, what appears now, Mr. Presiding Officer, is Commissioner Monsod's reservation. We would like to know whether or not he wants to take that up now.

MR. MONSOD: What remains now is my reservation which would not need a suspension of the Rules.

I would like to bring that up not at this time but maybe tomorrow or the day after tomorrow, Mr. Presiding Officer.

MR. DE CASTRO: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Colayco): Commissioner de Castro is recognized.

MR. DE CASTRO: I still would like to see whether the reservation made by Commissioner Monsod was made on time so that there may be no need for the suspension of the Rules. I still would like to see that from the records.

MR. MONSOD: I submit to that.

THE PRESIDING OFFICER (Mr. Colayco): But we do not have to act on that right now?

MR. DE CASTRO: Yes.

THE PRESIDING OFFICER (Mr. Colayco): Mr. Floor Leader, what is the situation now?

MR. BENGZON: May I be recognized.

THE PRESIDING OFFICER (Mr. Colayco): Commissioner Bengzon is recognized.

CONSIDERATION OF C.R. NO. 40

(Reopening Sections 5 and 11 of the Article on the Legislative)

PERIOD OF SPONSORSHIP AND DEBATE

MR. BENGZON: I now rise as chairman of the Steering Committee, Mr. Presiding Officer, and I would like to present to the body Committee Report No. 40.

Committee Report No. 40 was made because of a petition filed by the Committee on the Legislative, Petition No. 3, which sought for reasons stated therein to reopen the Article on the Legislative. This petition was circularized to all the members of the Committee on the Executive, the Steering Committee, and the majority of the members endorsed this favorably. Whereupon, Committee Report No. 40 was formulated which favorably endorses the reopening of the Article on the Legislative for the specific purpose of reopening Sections 5 and 11 of the said article.

We so endorse it, Mr. Presiding Officer, and we ask for the vote of the body.

THE PRESIDING OFFICER (Mr. Colayco): Is the body ready to vote?

MR. ROMULO: Yes, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Colayco): The chairman of the Steering Committee has already explained the purpose of his motion for the reopening of Sections 5 and 11 of the Article on the Legislative.

MR. SUAREZ: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Colayco): Commissioner Suarez is recognized.

MR. SUAREZ: Before we vote, may we seek only a clarification from the chairman of the Steering Committee.

I have here with me a copy of Committee Report No 40. The committee was kind enough to put opposite the names of the Commissioners the action taken by each individual Commissioner, and there is a phrase here reading

"without precedent." May we know the meaning of this phrase, Mr. Presiding Officer.

MR. BENGZON: The meaning of the phrase "without precedent" is that the decision was made just on the specific case without considering it a precedent so that in the future if there were any petitions filed and the Commissioners or the members of the Steering Committee thought that they did not merit a reopening, then this particular incident cannot be used as a precedent. It cannot be invoked as a bar to a rejection of the petition to reopen.

MR. SUAREZ: In the reverse situation, it also cannot be used as an instrument or as an example for reopening.

MR. BENGZON: It also cannot be used as an example for reopening.

MR. SUAREZ: It will be decided on a case-to-case basis, Mr. Presiding Officer.

MR. BENGZON: Yes.

With respect to the phrase "with reservations," I understand from the Gentleman concerned that they agreed to reopen, but they have reservations with respect to the merits of those that are being proposed.

MR. SUAREZ: And the phrase utilized by the Honorable Bernas, "conditioned on entertaining others," is self-explanatory.

MR. BENGZON: Yes.

MR. SUAREZ: And what was the result?

MR. BENGZON: All of those persons named here voted in favor of the reopening with the comments that they had.

MR. SUAREZ: Without considering it as a precedent.

MR. BENGZON: Without considering it as a precedent. Only one considered it, more or less, as a precedent.

MR. SUAREZ: Thank you, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Colayco): Commissioner de Castro is recognized.

MR. DE CASTRO: Mr. Presiding Officer, before we proceed to the voting on Sections 5 and 11 of the Article on the Legislative, may I know the reasons why these sections will have to be reopened?

THE PRESIDING OFFICER (Mr. Colayco): Will Commissioner de Castro repeat his question so that Commissioner Davide can explain it.

MR. DE CASTRO: May I know the reason for reopening Sections 5 and 11 of the Article on the Legislative.

MR. DAVIDE: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Colayco): Commissioner Davide is recognized.

MR. DAVIDE: In part, Petition No. 3 states:

WHEREAS, after the proposed Article on the Legislative Power was approved on Second Reading the Commission approved the amendments to recognize a supra-municipal level of local authority known as a metropolitan authority and in effect reserved to it a separate representation in the House of Representatives. . .

It may be recalled that when this particular matter was taken up by the Commission when the latter discussed the Article on Local Governments, I already stated the possibility of reopening Section 5, precisely, to accommodate

a separate representation for the metropolitan geopolitical unit.

Similarly, there was a reserved amendment of Commissioner Napoleon Rama to the effect that representatives in cities shall be elected at large; he made that reservation for the ordinance on apportionment to be appended to the Constitution. However, a careful analysis of the reserved amendment led to a conclusion that his amendment cannot be justified in the ordinance unless the principle is included in the main body of the Article on the Legislative.

Finally, there was a clamor to reassess the manner of representation and to consider the possibility of changing representation by legislative districts to representation by province, at least in the first election, due to the difficulty that our committee has encountered in meeting the counterproposals presented by several parties against the COMELEC proposal on the apportionment schemes provided to the committee by the COMELEC.

Finally, we are asking for a reopening of Section 11 for the reason that through inadvertence and after a deeper reflection, it became necessary that we should mandate that each House of the legislative assembly must not only keep a Journal but also a Record of all its proceedings.

MR. DE CASTRO: The three points of the Gentleman's third "whereas" is quite vague — about the clamor for a possible change of legislative districts to provinces. Did he take into consideration the clamor of the Province of Laguna more particularly the first district thereof?

MR. DAVIDE: That is exactly the reason we want that reopened — to consider and for the Commissioners to determine the merits of the scheme of representation.

MR. DE CASTRO: But the Gentleman's recommendation here is by provinces.

MR. DAVIDE: Under the proposal, only for the first election.

MR. DE CASTRO: Yes.

MR. DAVIDE: Because the First Congress will now allocate the seats in accordance with the district scheme that we have adopted.

MR. DE CASTRO: Even then, it is the clamor particularly of the First District of Laguna that they never had an opportunity to have a Congressman just because they are being beaten by number, by sheer number from the Cities of San Pablo, Sta. Cruz and Calamba. That is why the Members of the Batasang Pambansa there are Honorable de los Reyes from Sta. Cruz, Honorable Brion from San Pablo, Honorable Yulo from his sanctuary in Canlubang and Honorable Lagumbay near Sta. Cruz. The municipalities of San Pedro, Biñan, Sta. Rosa and Cabuyao have never had an opportunity.

MR. BENGZON: Mr. Presiding Officer.

MR. DE CASTRO: That is why I am objecting to this statement of clamor because we were never given an opportunity to present ourselves.

MR. BENGZON: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Colayco): The chairman of the committee is recognized.

MR. BENGZON: The two Gentlemen are already discussing the merits of the proposal. I think we should first decide whether or not we are going to reopen. Maybe we should already vote whether or not we will reopen. If the body decides to reopen, then the two Gentlemen can resume their debate because this already goes into the merits of the proposal which have not yet been reopened.

MR. DE CASTRO: Mr. Presiding Officer, I asked for the reason and he mentioned to me the reason that there is a clamor but the Gentleman did not hear the clamor of the Province of Laguna. What clamor is the Gentleman talking about here now and the reasoning for the opening of Sections 5 and 11 of the Article on the Legislative?

MR. DAVIDE: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Colayco): The Chair allowed Commissioner de Castro to express his views precisely not only to satisfy himself but for the education and the information of the rest of the body so that they can vote on this. And I believe now that the matter can be voted upon intelligently by the body.

MR. JAMIR: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Colayco): Commissioner Jamir is recognized.

MR. JAMIR: May I offer an amendment to the motion of the chairman of the Steering Committee to the effect that his motion to reopen be limited first to the first three paragraphs of Section 5 so that the discussions on subsections 4 and 5 can be heard later on without delaying the first three subsections.

MR. BENGZON: May I be really enlightened again, please.

MR. JAMIR: My proposal is to limit the Gentleman's motion to reopen the first three subsections of Section 5 in order not to affect the proceedings on this matter and we can discuss Sections 4 and 5 later on by virtue of another reopening.

MR. BENGZON: Is the Gentleman referring to Section 5 of the Article on the Legislative?

MR. JAMIR: Yes.

MR. BENGZON: But there are no subsections. There are three paragraphs.

MR. JAMIR: Paragraphs 1, 2 and 3. May we limit first the motion to reopen to those three paragraphs so that Commissioner de Castro's objection can be taken care of later on in another motion and we can proceed to the first three paragraphs.

MR. BENGZON: May I have the comment of the chairman of the committee.

THE PRESIDING OFFICER (Mr. Colayco): Commissioner Davide is recognized.

MR. DAVIDE: The other paragraph, Mr. Presiding Officer, would be related to the first three.

THE PRESIDING OFFICER (Mr.- Colayco): So, is the Gentleman not accepting the suggestion of Commissioner Jamir?

MR. DAVIDE: I would suggest that the entire Section 5 will be opened and, of course, Section 11.

MR. JAMIR: Therefore, since these are interrelated the objections of Commissioner de Castro are in order that the body will be able to determine whether we should agree to the reopening or not.

THE PRESIDING OFFICER (Mr. Colayco): Precisely, I think the Chair has given him enough time to explain his objection. So, the body will now vote on the report of the Steering Committee, Committee Report No. 40, sponsoring the petition to reopen the Article on the Legislative Department with specific reference only to Sections 5 and 11 thereof.

MR. BENGZON: Yes, Mr. Presiding Officer, and we need two-thirds.

THE PRESIDING OFFICER (Mr. Colayco): This needs only two-thirds vote because this is sponsored by the

Steering Committee.

MR. BENGZON: Yes.

MR. DE CASTRO: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Colayco): Commissioner de Castro is recognized.

MR. DE CASTRO: Before we proceed to vote, may we be allowed to discuss and debate on the matter.

THE PRESIDING OFFICER (Mr. Colayco): I am afraid that we will be putting the cart before the horse.

MR. DE CASTRO: Not necessarily because before we proceed to vote on whether to suspend the Rules or not, there must be certain debates on this.

THE PRESIDING OFFICER (Mr. Colayco): Yes.

MR. DE CASTRO: There must be certain questions to be called; we cannot simply raise our hands.

THE PRESIDING OFFICER (Mr. Colayco): Yes. I think it is enough that the Gentleman has explained the grounds for objecting to the approval without the necessity of having to go into the merits of the objection.

So the Chair rules that we should now proceed with the voting. All those in favor of the approval of the petition to reopen Sections 5 and 11 of the Article on the Legislative which is sponsored by the Steering Committee will please raise their hand.

MR. RODRIGO: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Colayco): Commissioner Rodrigo is recognized.

MR. RODRIGO: I think the motion we should vote on is not to reopen Sections 5 and 11, but to reopen Sections 5 and 11 for the specific purpose stated.

MR. BENGZON: Yes.

THE PRESIDING OFFICER (Mr. Colayco): Yes.

MR. RODRIGO: There is also in Section 5 the sectoral voting and party list system. Those things were not included.

VOTING

THE PRESIDING OFFICER (Mr. Colayco): Yes. The explanation is accepted.

As many as are in favor, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (Few Members raised their hand.)

The results show 31 votes in favor and 4 against; the motion is approved.

MR. BENGZON: Mr. Presiding Officer, may I call on the chairman of the committee, Honorable Davide, to sponsor the provisions.

THE PRESIDING OFFICER (Mr. Colayco): Commissioner Davide is recognized.

MR. DAVIDE: Thank you, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Colayco): Is this the title of the petition?

MR. DAVIDE: Yes.

MR. DE CASTRO: Mr. Presiding Officer, may we know the number of the Commissioners in the hall so we can appropriately compute two-thirds?

THE PRESIDING OFFICER (Mr. Colayco): The Secretary-General is requested to do the count. There are 38 on the floor.

The Secretary-General is requested to read the title of the petition.

THE SECRETARY-GENERAL: Petition No. 3, entitled:

AN URGENT PETITION TO REOPEN SECTIONS 5 AND 11 OF THE ARTICLE ON THE LEGISLATIVE POWER.

THE PRESIDING OFFICER (Mr. Colayco) : Commissioner Davide is recognized.

SPONSORSHIP SPEECH OF COMMISSIONER DAVIDE

MR. DAVIDE: Thank you, Mr. Presiding Officer.

Insofar as the original Section 5 is concerned, the Commission will please notice that we fixed the composition of the Congress of the Lower House, that is:

The House of Representatives shall be composed of not more than two hundred and fifty members who shall be elected from legislative districts apportioned among the provinces and cities in accordance with the number of their respective inhabitants, and on the basis of uniform and progressive ratio, and those who, as provided by law, shall be elected through a party list system of registered national, regional and sectoral parties or organizations. The party list representatives shall constitute twenty per cent of the total membership of the House of Representatives. For three consecutive terms after the ratification of this Constitution, twenty-five of the seats allocated to party list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth and such other sectors as may be provided by law, except the religious sector.

Each legislative district shall comprise, as far as practicable, contiguous, compact and adjacent territory. Each city with a population of at least two hundred thousand, or each province, shall have at least one representative.

On the basis of this particular proposal, we requested the assistance of the COMELEC to submit to the committee an apportionment on the basis of the standards provided for therein, and the COMELEC came up with a total of 199 districts. Four cities were each given a separate seat, considering the increase of their population, namely: Angeles City, Bacolod, Butuan City and General Santos City. We did not realize, however, that while doing so, we also disenfranchised some other cities which earlier were already given separate seats, especially in the 1984 election, because these cities were already considered highly urbanized cities with only a population requirement of at least 150,000. Necessarily, the City of Iligan, without of course the upgrading of its population, lost its seat. Baguio also lost its seat. Then, in the matter of the districting, while the COMELEC dutifully made the apportionment, in the sense that the map of a particular province was just split into the number of districts corresponding to the number of seats it may be entitled to, it broke up the provinces and it turned out that almost daily since then, we received counterproposals from different sectors of many of these provinces, such that it would be practically impossible for the Commission to be able to append an ordinance indicating the particular district corresponding to several municipalities in each province. So we have this difficulty and we thought that it would be Congress which will be in a better position to allocate the seats into districts, since practically all the provinces will be represented in the First Congress of the Philippines following the ratification of this

Constitution. The only option then available to us, in order that we could really immediately provide for the apportionment of the seats, would be, insofar as the First Congress of the Philippines is concerned more particularly the Lower House, to adopt the scheme of representation provided for in the ordinance appended to the 1973 Constitution governing the seats or the constituencies for the regular Batasang Pambansa in the election in May of 1984. However, we mandate that the First Congress shall allocate the seats to districts in accordance with the standards provided for in Section 5.

Moreover, with that we will also solve the problem presented by Commissioner Rama, wherein he proposed that if a city is entitled to two or more seats, the representatives in the city must be chosen at-large or elected at-large. It will avoid that particular problem because in the apportionment of the seats under the 1984 election, cities with two or more representatives would also elect at-large the said representatives.

It will be noted that our proposal on a maximum composition of 250 is very, very inflexible, in the sense that when population grows in the years to come, Congress would only be limited to apportion the seats for legislative districts to only a maximum of 200 seats for the Lower House. So, it will turn out that many provinces will become underrepresented. So, we thought that it would be best that we provide a flexible proposal, a maximum of 250, but we leave it to Congress to provide a greater number by law. We will not peg the maximum composition of the Lower House to a strict figure of 250. Since in the matter of determining the party list representative, if the computation of the 20 percent will be on the total number which may not be filled up by the regular districts, we might not be able to maintain, actually, for every Congress the limitation of 20 percent. It was also thought that, perhaps, the 20 percent must be on the basis of the total number of regular districts.

Finally, on Section 11, this is a very simple amendment which I think Commissioner de Castro will not object to. It will be to add a paragraph of a few words only requiring the keeping of a record similar to the record provided for under the Rules of the Commission.

THE PRESIDING OFFICER (Mr. Colayco): Is the Commissioner ready for interpellations?

MR. DAVIDE: Yes, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Colayco): Commissioner de Castro is recognized.

MR. DE CASTRO: Thank you.

If I heard the Commissioner right, he stated that he found difficulty on the districting of the different provinces and cities. Am I right in what I heard?

MR. DAVIDE: Among others, Mr. Presiding Officer, that is correct.

MR. DE CASTRO: So that the Commissioner reverted to the seats of the Batasang Pambansa of 1984 in the apportioning of the seats for Congressmen in provinces and cities. Is that right?

MR. DAVIDE: Only partly, because that will only be true for the Lower House in the First Congress. The succeeding will be by districts already.

MR. DE CASTRO: No, I mean in the first, we are talking of the first.

MR. DAVIDE: That is correct, I said partly, because it will be only for the first Lower House.

MR. DE CASTRO: All right. Do I understand then that when the Commissioner submitted his committee report on the legislative, there was no serious study on the first paragraph of Section 5?

MR. DAVIDE: There was a serious study, but we know for a fact that the matter of the actual apportionment will

not be in this Constitution but merely in the ordinance. So the ordinance was to be taken later.

MR. DE CASTRO: If the study is serious as what the Commissioner said, why did he state here that the Members of the House of Representatives shall be elected from legislative districts?

MR. DAVIDE: We decided that it should be by legislative districts, but we also had in mind the possibility of submitting to the Commission an ordinance actually apportioning the seats. The actual apportionment of the seats cannot be incorporated in the main body of the Constitution, because the configuration alone of the ordinance indicating the legislative districts, with the enumeration of the municipalities, will probably be, five times thicker than the Constitution itself.

MR. DE CASTRO: I am willing to help the Commissioner on that, just to be fair in the apportionment and representation of Members of the Lower House of Representatives in our First Congress.

MR. DAVIDE: Yes, it will be fair.

MR. DE CASTRO: If the Commissioner finds difficulty, the difficulty can be overcome and yet serious study can be made so that there will be no unfair representation in the First Congress.

MR. DAVIDE: Frankly speaking, it is not even necessary that we really solve the problem. It is not necessary that this Commission will append an ordinance. Perhaps it can be done by an executive proclamation, but we felt that it is also our duty that we provide for the actual apportionment by way of an ordinance.

MR. DE CASTRO: Yes, but apportionment by districts, not by provinces as in the Gentleman's proposal here. It will be by provinces in accordance with the apportionment made by the Batasang Pambansa in 1984.

MR. DAVIDE: Mr. Presiding Officer, the committee took up in several meetings the proposed apportionment of congressional districts and copies of these were distributed. I will show the Gentleman how thick it is. (Showing the copies) This is it.

MR. DE CASTRO: It is all right. But that is just an ordinance appended to that.

MR. DAVIDE: Out of this, we received several complaints already and we have the complaints from Benguet Province, Bohol, Bulacan, Butuan, Cagayan Province, Capiz, Cavite, Cebu, Cotabato, Davao del Sur, Iloilo, Isabela, Laguna, Lanao del Norte, Lanao del Sur, Leyte, Negros Occidental, Nueva Ecija, Pangasinan, Quezon Province, Rizal Province, Samar, Sorsogon, Sulu, Surigao del Sur, Tarlac, Zambales, Zamboanga del Norte, South Cotabato and Pampanga.

MR. DE CASTRO: Because the Commissioner was trying to put it by province, those complaints came in.

MR. DAVIDE: No, Mr. Presiding Officer, the complaints were based on the apportionment by districts not by province, because after all, the people were used already to election by province in the 1984 election.

MR. DE CASTRO: I am fighting for the districts in the Province of Laguna not because I will be a candidate; no, sir, I will be watching by the sides.

MR. DAVIDE: We can limit the question on Laguna.

MR. DE CASTRO: But I wish to inform this body that in the municipalities of San Pedro, Biñan, Sta. Rosa up to Cabuyao, there is only one Congressman who was elected because he has several relatives in San Pablo and in Calamba. Only Congressman Gonzales came out in the elections and that was since before the war and until now nobody comes from those four municipalities. All of them will come from Sta. Cruz. Commissioner de los Reyes comes from San Pablo and Canlubang which is the sanctuary of Mr. Yulo. That is all. That is why I am

representing my place here because we have no opportunity to be represented in Congress — not even Senators — that is why I am for redistricting the Province of Laguna, and it is the easiest thing to do in that province.

MR. DAVIDE: The Province of Laguna will be redistricted in the Second Congress of the Philippines because we will mandate, as shown in the proposed amendment. The First Congress is mandated to apportion the seats into districts in accordance with the standards provided for in Section 5. It is only a sacrifice for the First Congress.

MR. DE CASTRO: It is a sacrifice. Kung may maghihirap, kami muna ang maghihirap because the Commissioner refuses to work harder in redistricting in the first place.

MR. DAVIDE: Mr. Presiding Officer, it will not only be Laguna because there are also many who would propose that it should be by district because they think that it is easy to win in a district. Frankly speaking, if I were to run, I would prefer to run in my district but I do not think it would be proper because there is much difficulty in the apportionment of the seats in Cebu alone. There are about six different proposals. But it is easy to win on a provincial level. First, we avoid warlordism. Secondly, it is less expensive if one belongs to one political organization or to one group because one can share the expenses in the campaign.

MR. DE CASTRO: I will tell the body what is the difficulty of a province. It is easy to have a warlord who will control the whole province.

THE PRESIDING OFFICER (Mr. Colayco): Commissioner de Castro, just a minute. Considering that the time taken by the two Commissioners is eight minutes now, I will give two more minutes. Can the Commissioners finish?

MR. DE CASTRO: I can finish in one and one-half minutes perhaps.

THE PRESIDING OFFICER (Mr. Colayco): Thank you.

MR. DE CASTRO: The disadvantage of having a candidate for the whole province for Congressman is that the candidate will spend more and travel more over the whole province; unlike when we put the District of San Pedro under three municipalities, it is very, very easy. Warlordism is more attainable in a province than by district.

That is less than one minute. Thank you.

THE PRESIDING OFFICER (Mr. Colayco): Thank you very much.

MR. DAVIDE: Of course, we disagree with that, Mr. Presiding Officer.

MR. JAMIR: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Colayco): Commissioner Jamir is recognized.

MR. JAMIR: Will Senator Davide yield to a few questions?

MR. DAVIDE: To His Excellency, President Jamir.

MR. JAMIR: I am overage.

THE PRESIDING OFFICER (Mr. Colayco): The Commissioners are given five minutes.

MR. JAMIR: I understand from the Commissioner that there are many objections to the redistricting made by the COMELEC.

MR. DAVIDE: Yes, Mr. Presiding Officer, and I enumerated several provinces.

MR. JAMIR: As the Commissioner has enumerated.

MR. DAVIDE: And these are not only the contested provinces. Several groups within a particular province submitted several counterproposals.

MR. JAMIR: Considering the nature of politics in the Philippines of which the Commissioner knows more than I do, does he think that during the first term of Congress the various political parties in a province, for example, can agree on a district?

MR. DAVIDE: Mr. Presiding Officer, as contained in my proposal, the First Congress is mandated to apportion.

MR. JAMIR: Yes.

MR. DAVIDE: It cannot avoid that constitutional duty. If they cannot apportion, there will be no election; and, therefore, their term will expire. So, they will be compelled; they will be compelled to apportion into districts.

MR. JAMIR: But there is nothing to that effect here in this proposal that there will be no election.

MR. DAVIDE: There is, Mr. Presiding Officer.

Under paragraph 5 it is stated: "THE FIRST CONGRESS ELECTED UNDER THIS CONSTITUTION SHALL MAKE THE APPORTIONMENT OF LEGISLATIVE DISTRICTS BASED ON THE STANDARDS PROVIDED HEREIN. IT MAY MAKE SUBSEQUENT REAPPORTIONMENT THEREOF ON SUCH BASIS, WITHIN THREE YEARS FOLLOWING THE RETURN OF EVERY ENUMERATION."

The last sentence would be directory, but the first is mandatory.

MR. JAMIR: Mandatory, in the sense that they are supposed to make a redistricting during the first term of Congress?

MR. DAVIDE: Yes, Mr. Presiding Officer.

MR. JAMIR: But I am looking for that penalty clause that the Commissioner mentioned, that there will be no election if they fail.

MR. DAVIDE: There will be no basis for the seats because the ordinance governing the 1984 election will apply only to the first election.

MR. JAMIR: Will the Commissioner be willing then to amend this provision of paragraph 5 by making patently clear that penalty clause?

MR. DAVIDE: At the proper time, I am willing to hear that, Mr. Presiding Officer.

MR. JAMIR: I am happy to hear that. I am happy to hear that because in my peaceful province of Cavite, for about 40 years the Montanos and the Camerinos have been fighting over the redistricting of Cavite. They never came nearer to any solution. I think that will happen also, unless we put that penalty clause, which the Commissioner has mentioned. And I will propose that in due time.

Thank you, Mr. Presiding Officer.

MR. RAMA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Colayco): The Floor Leader is recognized.

MR. RAMA: We are ready to vote on the first section now.

THE PRESIDING OFFICER (Mr. Colayco): Is the Commissioner referring to paragraph 1 of Section 5 only?

MR. RAMA: Section 5, paragraph 1.

THE PRESIDING OFFICER (Mr. Colayco): All right.

MR. DAVIDE: The whole thing or the first paragraph first?

THE PRESIDING OFFICER (Mr. Colayco): Yes, please.

MR. DAVIDE: Section 5 or paragraph 1?

THE PRESIDING OFFICER (Mr. Colayco): As amended by the Commissioner.

MR. DAVIDE: Section 5, paragraph 1, as amended, reads: "The House of Representatives shall be composed of not more than two hundred and fifty members, UNLESS OTHERWISE FIXED BY LAW, who shall be elected from legislative districts apportioned among the provinces, cities, AND THE METROPOLITAN MANILA AREA in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio, and those who, AS PROVIDED BY LAW, SHALL BE ELECTED THROUGH A PARTY-LIST SYSTEM OF REGISTERED NATIONAL, REGIONAL, AND SECTORAL PARTIES OR ORGANIZATIONS."

THE PRESIDING OFFICER (Mr. Colayco): Does Commissioner Rodrigo want to be recognized?

MR. RODRIGO: Yes, before we vote, I feel it is my duty to call attention to a provision in the Rules of the Batasang Pambansa regarding voting for measures after the suspension of the Rules because this Rules of the Batasang Pambansa is suppletory to our Rules. I would like to call attention to the following part of Section 124:

If the Batasan votes to suspend the Rules it shall forthwith proceed to consider the measure.

That is the measure that is proposed, the reason for suspending the Rules. Then this is the important thing:

A two-thirds vote of the Members present shall be necessary for the passage of said measure, a quorum being present.

So, in this voting that we will make, a two-thirds vote is necessary to approve the proposed measure.

THE PRESIDING OFFICER (Mr. Colayco): Of the quorum present.

MR. RODRIGO: Of the quorum present.

THE PRESIDING OFFICER (Mr. Colayco): Is the Assembly ready? I think Commissioner Padilla wants to interpellate.

MR. PADILLA: Yes, Mr. Presiding Officer.

This Section 5 provides for a House of not more than 250 Members and it does not include the sectoral list.

MR. DAVIDE: Mr. Presiding Officer, it includes already the party list representatives.

MR. PADILLA: I recall that during the past Congress where we had a Senate of 24, the House was only composed of not more than 120, and actually, it was much less than that number. Of course, during the Batasang Pambansa, being a unicameral assembly, the number, I think, increased to about 250?

MR. DAVIDE: The interim Batasang Pambansa had a membership of 187, I believe, including already the sectoral representations and those who had been appointed from the Cabinet.

MR. PADILLA: What about the last Batasan?

MR. DAVIDE: For the regular Batasang Pambansa, according to the ordinance appended to the 1973 Constitution, there were 183 regular representatives. So, if we adopt that ordinance, the regular representatives will only be 183. The recommendation of COMELEC for the first Congress under this Constitution is 199.

MR. PADILLA: Does the Commissioner not believe that a House composed of, say, 250 — although it says not more — is a very vague Assembly, a House composed of so many Members?

MR. DAVIDE: Mr. Presiding Officer, we had taken that up. That issue was already decided. However, I would only stress that the 250 is the maximum and, therefore, the actual number may be much less. That is why if we will adopt the 1984 model, we will only have 183 regular district representatives. We also propose in this amendment the clause "UNLESS OTHERWISE FIXED BY LAW" to provide again the possibility of a reduction of the maximum or an increase beyond the 250 if the population would grow so much.

MR. PADILLA: Assuming that the population may grow, provided the district is contiguous and to avoid gerrymandering, a particular district may be composed not only of a determinate territory but also the population or inhabitants therein, the registered voters therein which may be increased. What I mean is, if before one district would have 150,000 or 200,000, it is simple to make the number composing one district, say, 250,000 or 300,000 so that the seats in the House of Representatives may not be so numerous that it may be difficult sometimes to have a more orderly procedure or, in the absence of several Members, to even constitute a quorum. What I am driving at is: If under the Congress, before martial law, the House of Representatives, where our Commissioner Laurel used to be Speaker, only consisted of a little more than 100 seats, does the Commissioner not believe that 250 — assuming that this is the maximum — is still very big?

MR. DAVIDE: Mr. Presiding Officer, taking into account the population — as projected in 1986, the population of the country will be 56 million, and the constant used by the COMELEC in allocating the number of seats to 199 is a population of 400,000 already — so any further reduction may mean that there will be more and more people represented by less and less. It might not be conducive to a legislative body which is supposed to be representative.

TISE PRESIDING OFFICER (Mr. Colayco): May the Chair know if Commissioner Padilla has any specific amendment to offer?

MR. PADILLA: I am going to suggest that instead of 250, the maximum should be 200. I think that is big enough.

THE PRESIDING OFFICER (Mr. Colayco): Is that a suggestion only or a formal proposal for amendment?

MR. PADILLA: That is first a suggestion.

THE PRESIDING OFFICER (Mr. Colayco): What does Commissioner Davide say?

MR. DAVIDE: I would rather leave it to the body, Mr. Presiding Officer. But I should like to invite the attention of the body that the 199 proposed by the COMELEC is based on 1 for every 400,000 on the average.

THE PRESIDING OFFICER (Mr. Colayco): Does Commissioner Padilla want to comment?

MR. PADILLA: Does that refer to population?

MR. DAVIDE: Yes. On the basis of population.

MR. PADILLA: Is this with regard to registered voters within that district?

MR. DAVIDE: No, because for purposes of representation in any legislative body, the basis would not be the number of registered voters but the total number of inhabitants — the entire population.

MR. GASCON: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Colayco): Commissioner Gascon is recognized.

MR. GASCON: A parliamentary inquiry on the amendment of Commissioner Padilla. I recall that when we went into a suspension of the Rules, Commissioner Rodrigo reminded us that it is not a reopening of the whole Section 5 but a suspension of the Rules to reopen to consider the amendments proposed by the committee. The committee is not presenting any proposal with regard to replacing the 250 to 200. So, I am not sure whether it is proper or in order for Commissioner Padilla to present an amendment as to that because it is not in direct reference to any committee amendment, Mr. Presiding Officer.

MR. PADILLA: Mr. Presiding Officer, I do not agree with the view expressed by Commissioner Rodrigo that when we reopen Section 5 we are only limited by what the committee recommends. If we reopen Section 5, I believe it should be opened to a reexamination.

MR. BENGZON: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Colayco): Commissioner Bengzon is recognized.

MR. BENGZON: I was the one who filed that motion to reopen in behalf of the Steering Committee and I pursued my motion after the clarification of Commissioner Rodrigo. That was really the intent — to reopen Section 5 only insofar as those portions of it are concerned, where Commissioner Davide has amendments.

THE PRESIDING OFFICER (Mr. Colayco): Does the Commissioner mean to say that the body would have to take it or leave it?

MR. BENGZON: No, only those paragraphs in Section 5 where the Committee on the Legislative has a proposal.

THE PRESIDING OFFICER (Mr.- Colayco): Yes.

MR. BENGZON: Those are the only portions which are reopened and that motion of mine was pursued after Commissioner Rodrigo made that clarification. So, that was the intention of my motion.

MR. GASCON: Furthermore, Mr. Presiding Officer, it does not necessarily mean that we should take it or leave it as far as the proposals of Commissioner Davide are concerned. What I understand is that as they propose the proposals which we have agreed upon to do so, we cannot present amendments to the substance of these proposals which are not included in Section 5.

THE PRESIDING OFFICER (Mr. Colayco): Yes. What are the particular paragraphs of Section 5 which are covered by the petition?

MR. BENGZON: Section 5, paragraph 1, which I suggest we vote upon because it does not even touch on the subject matter that Commissioner Padilla is talking about.

THE PRESIDING OFFICER (Mr. Colayco): Commissioner Padilla was referring to the composition of the House of Representatives which is stated in the committee report to be composed of not more than 250. So, I feel that if he has any amendment as to the number, it will be proper. Does the Commissioner agree?

MR. BENGZON: Yes. I stand corrected on that, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Colayco): That is why I was asking Commissioner Padilla if he had any definite amendment.

MR. GASCON: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Colayco): Commissioner Gascon is recognized.

MR. GASCON: The 250 which is here in the proposed amendment is already in our present Article on the Legislative; so, there is no amendment with regard to the composition of the legislature.

MR. BENGZON: Yes.

MR. GASCON: The amendment is only with regard to the phrase "UNLESS OTHERWISE FIXED BY LAW" and the addition of "AND THE METROPOLITAN MANILA AREA." So, I think the issue that we should debate upon is the substance of these two provisions; not the changing of the composition which we have already agreed upon.

THE PRESIDING OFFICER (Mr. Colayco): The capitalized portions?

MR. BENGZON: Yes.

MR. GASCON: Yes, Mr. Presiding Officer.

MR. BENGZON: I subscribe to the view of Commissioner Gascon.

MR. PADILLA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Colayco): Commissioner Padilla is recognized.

MR. PADILLA: While the chairman of the Steering Committee made that statement and there was some recommendation or view of other Members, that has never been voted or approved by the body. What is strange now is that we are being imposed upon to consider only certain matters that the committee proposes and the body has no other alternative but to either accept or reject it. But I feel that when Section 5, not the entire Legislative Article, is reopened, why should the judgment or the opinion of the Commission be limited to what a particular committee desires?

THE PRESIDING OFFICER (Mr. Colayco): Can Commissioner Bengzon answer that?

MR. BENGZON: I reiterate my position, Mr. Presiding Officer, that when I filed that motion, it was just with that intention to take up the amendments to be proposed by the committee and nothing else.

THE PRESIDING OFFICER (Mr. Colayco): The Chair wants to know this. Section 5, as presented now, apparently is intended to be amended only insofar as the words or phrases which are capitalized are concerned; is that right?

MR. BENGZON: Yes.

THE PRESIDING OFFICER (Mr. Colayco): Does this mean, therefore, that the sentence which reads: "The House of Representatives shall be composed of not more than 250 members" was the original formulation of Section 5 when it was passed upon by the body?

MR BENGZON: Yes, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Colayco): In that case, I agree with the contention of the presentor, the Steering Committee, that any amendments cannot cover any portion of the section except those portions which are intended to be amended; otherwise, we would be going all over the whole section which has otherwise not been excepted to by the presentor.

MR. BENGZON: That was not the intention.

THE PRESIDING OFFICER (Mr. Colayco): Yes. Anyway, I do not think Commissioner Padilla is very serious about his question.

MR. PADILLA: Mr. Presiding Officer, even if we concede, for example, that 200 or 250 is not so very material, I am expressing my view that the Commission cannot be limited in its discretion and judgment by any committee.

THE PRESIDING OFFICER (Mr. Colayco): The Chair is guided by what appears as a logical sequence of our ordinary rules.

MR. RODRIGO: Mr. Presiding Officer.

MR. RAMA: I move that we take a vote.

THE PRESIDING OFFICER (Mr. Colayco): Commissioner Rodrigo is recognized.

MR. RODRIGO: I just want to read Section 127 of the Rules of the Batasang Pambansa:

A Motion to Suspend the Rules for the Passage of a Measure —

A motion to suspend the Rules for the passage of a measure may be debated for one hour which shall be divided equally between those in favor and those against. If the Batasan votes to suspend the Rules, it shall forthwith proceed to consider the measure.

A two-thirds vote of the Members present shall be necessary for the passage of said measure, a quorum being present.

It is very clear that only the measure which was the reason specified for suspension of the Rules can be taken up.

MR. BENGZON: May we now ask for a vote, Mr. Presiding Officer.

MR. PADILLA: May I say that this Committee Report No. 40 precisely says:

An urgent petition to reopen Sections 5 and 11 of the Article on the Legislative.

It does not say that the body will be limited to whatever the Committee on the Legislative will present to the body.

MR. BENGZON: Mr. Presiding Officer, may I just clarify.

THE PRESIDING OFFICER (Mr. Colayco): The Commissioner may proceed.

MR. BENGZON: That is the title. But if we go through the petition, it is clear when I presented my motion, it was with the intention of the comment of Commissioner Rodrigo, and the body voted on it. The Commission agreed with that intent; so it is not a matter of the committee imposing its will on the Commission because the Commission decided on that point.

So, may we ask for a voting.

THE PRESIDING OFFICER (Mr. Colayco): The Chair affirms its ruling.

MR. RAMA: We are ready to vote, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Colayco): Is the Assembly ready?

MR. RAMA: We are ready to vote.

VOTING

THE PRESIDING OFFICER (Mr. Colayco): As many as are in favor of the amendment indicated by capitalized types in Section 5, paragraph 1, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (No Member raised his hand.)

As many as are abstaining, please raise their hand. (One Member raised his hand.)

The results show 27 votes in favor, none against and 1 abstention; the amendment is approved.

So, the votes exceeded by three the required two-thirds. The amendment is approved.

MR. RAMA: Mr. Presiding Officer, I ask that Commissioner Davide be recognized to read the second amendment.

THE PRESIDING OFFICER (Mr. Colayco): Commissioner Davide is recognized.

MR. DAVIDE: The second paragraph will read: "THE PARTY-LIST REPRESENTATIVES SHALL CONSTITUTE TWENTY PER CENT OF THE TOTAL NUMBER OF DISTRICT REPRESENTATIVES. FOR THREE CONSECUTIVE TERMS AFTER THE RATIFICATION OF THIS CONSTITUTION, ONE-HALF OF THE SEATS ALLOCATED TO PARTY-LIST REPRESENTATIVES SHALL BE FILLED, AS PROVIDED BY LAW, BY SELECTION OR ELECTION FROM THE LABOR, PEASANT, URBAN POOR, INDIGENOUS CULTURAL COMMUNITIES, WOMEN, YOUTH AND SUCH OTHER SECTORS AS MAY BE PROVIDED BY LAW, EXCEPT THE RELIGIOUS SECTOR."

MR. MONSOD: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Colayco): Commissioner Monsod is recognized.

MR. MONSOD: May I ask the honorable Commissioner some questions on this article.

MR. DAVIDE: Certainly, Mr. Presiding Officer.

MR. MONSOD: Mr. Presiding Officer, just a clarification. When we say "twenty per cent of the total number of district representatives," in the plan that has been submitted to us which is based on the 1984 elections that is 183?

MR. DAVIDE: Yes, Mr. Presiding Officer.

MR. MONSOD: When we say "number of district representatives," is this 183 plus the party list?

MR. DAVIDE: One hundred eighty-three plus 20 percent thereof representing the party list representative.

MR. MONSOD: Mr. Presiding Officer, the arithmetic does not come out right, because the reciprocal of 20 percent is 25. I think we are talking about the same figure but it may not be properly reflected in the text.

What we mean here, Mr. Presiding Officer, is that I hope there will be a total of 228 representatives since 80 percent of 228 is 183 who will be the regular district representatives and 45 will be the party list representatives.

Is that not what we mean here, Mr. Presiding Officer?

MR. DAVIDE: No, Mr. Presiding Officer. The total number of district representatives will be 183.

MR. MONSOD: Yes. The way we have it here is that the party list representatives shall constitute 20 percent of the total number of district representatives. This seems to say that 20 percent of 183, or roughly 36, will be the

party list representatives.

MR. DAVIDE: I am open to a suggestion to reflect the intention: that it should be 183 plus 38, because what would be 20 percent of 183 would be 37.60.

MR. MONSOD: No, Mr. Presiding Officer. I think if we follow the original intent, which was a total number of 250 of which 50 would be party list, we are really talking about 20 percent of the total number, including the party list representatives.

MR. DAVIDE: So, would the Commissioner want the retention of the original wording?

MR. MONSOD: There is a slight problem there because if we use the original wording, we are talking of 250, whereas we are not going to use up the 250 in the next elections or in the foreseeable future.

So, may I present an amendment. Maybe the Commissioner can give us a few minutes to present the amendment to reflect the intent, Mr. Presiding Officer.

SUSPENSION OF SESSION

THE PRESIDING OFFICER (Mr. Colayco): The session is suspended for a few minutes.

It was 6:29 p.m.

RESUMPTION OF SESSION

At 6:37p.m., the session was resumed.

THE PRESIDING OFFICER (Mr. Colayco): The session is resumed.

MR. RAMA: Mr. Presiding Officer, I ask that Commissioner Davide be recognized for the new formulation.

THE PRESIDING OFFICER (Mr. Colayco): Commissioner Davide is recognized.

MR. DAVIDE: Mr. Presiding Officer, Commissioner Monsod has a proposal to reflect accurately the intention. May I request that Commissioner Monsod be recognized.

MR. MONSOD: I would like to propose that Section 2 will read: "THE PARTY-LIST REPRESENTATIVES SHALL CONSTITUTE TWENTY PER CENT OF THE TOTAL NUMBER OF REPRESENTATIVES INCLUDING THOSE UNDER THE PARTY-LIST."

MR. GASCON: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Colayco): Commissioner Gascon is recognized.

MR. GASCON: I would like to ask a question. Is the intent of the proposal of Commissioner Monsod to maintain the ratio of 80 percent legislative district and 20 percent party list representatives on a constant basis?

MR. MONSOD: Yes, Mr. Presiding Officer.

MR. GASCON: Regardless of the number of legislative representatives and the number of the party list representatives?

MR. MONSOD: Yes, Mr. Presiding Officer.

MR. GASCON: Thank you, Mr. Presiding Officer.

MR. MONSOD: And then to go on and say adopt the rest of the paragraph. I, however, would like to read into the

record that if the total number of representatives under the party list is not divisible by two in whole numbers, then it is the sectoral representatives who will get the larger number. For example, if it is 45 then the sectoral representative will get 23 and the party list 22.

THE PRESIDING OFFICER. (Mr. Colayco): Commissioner Villacorta is recognized.

MR. VILLACORTA: Mr. Presiding Officer, I was going to ask about that issue. So, it is clear now that for this First Congress the sectoral representatives will be 23.

MR. MONSOD: That is how it comes out in applying this section.

MR. VILLACORTA: Thank you, Mr. Presiding Officer.

MR. RAMA: Mr. Presiding Officer, the body is ready to vote now.

THE PRESIDING OFFICER (Mr. Colayco): Will Commissioner Davide read the revised paragraph 2 of Section 5.

MR. MONSOD: The paragraph will read: "THE PARTY-LIST REPRESENTATIVES SHALL CONSTITUTE TWENTY PER CENT OF THE TOTAL NUMBER OF REPRESENTATIVES INCLUDING THOSE UNDER THE PARTY-LIST. FOR THREE CONSECUTIVE TERMS AFTER THE RATIFICATION OF THIS CONSTITUTION, ONE-HALF OF THE SEATS ALLOCATED TO THE PARTY-LIST REPRESENTATIVES SHALL BE FILLED AS PROVIDED BY LAW BY SELECTION OR ELECTION FROM THE LABOR, PEASANT, URBAN POOR, INDIGENOUS CULTURAL COMMUNITIES, WOMEN, YOUTH, AND SUCH OTHER SECTORS AS MAY BE PROVIDED BY LAW, EXCEPT THE RELIGIOUS SECTOR."

MR. JAMIR: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Colayco): Commissioner Jamir is recognized.

MR. JAMIR: I would like to propose an amendment. After the word "YOUTH" on the third line to the last, add the words "WAR VETERANS AND VETERANS OF MILITARY CAMPAIGNS."

THE PRESIDING OFFICER (Mr. Colayco): No, that is not included in the amended portion.

MR. GASCON: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Colayco): The Chair has already ruled that only that portion of the section which is being amended or sought to be amended can in turn be amended.

Is Commissioner Gascon through?

MR. MONSOD: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Colayco): Commissioner Monsod is recognized.

MR. MONSOD: I believe, however, that when we discussed that matter, it was already put into the records that the words "such other sectors as may be provided by law" should consider the veterans, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Colayco): Commissioner Maambong is recognized.

MR. MAAMBONG: Just one clarification. When Commissioner Monsod answered in the affirmative the question whether the sectoral representatives would be 23, are we also assuming that the regular representatives to be voted on is 183?

MR. MONSOD: Yes, Mr. Presiding Officer. I think the principle is what is important — that the party list

representatives should constitute 20 percent of the total, including the party list system.

MR. MAAMBONG: And what would be the other half of the 23? How many would it be?

MR. MONSOD: Twenty-two because I read into the records that in case it is not divisible exactly by two, then it is the sectoral representatives who should get the seat.

MR. MAAMBONG: Thank you, Mr. Presiding Officer.

VOTING

THE PRESIDING OFFICER (Mr. Colayco): As many as are in favor of paragraph 2, Section 5, as revised, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (No Member raised his hand.)

As many as are abstaining, please raise their hand. (One Member raised his hand.)

Abstention, Mr. Vice-President?

MR. PADILLA: Yes.

THE PRESIDING OFFICER (Mr. Colayco): The results show 32 votes in favor, none against and one abstention; the amended paragraph 2 of Section 5 of the Article on the Legislative is approved.

MR. MONSOD: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Colayco): Commissioner Monsod is recognized.

MR. MONSOD: I just want to make a manifestation that the Committee on Style can do it with respect to that phrase. We can also say "including the party list representatives."

Thank you.

MR. RAMA: Commissioner Davide wishes to be recognized.

THE PRESIDING OFFICER (Mr.- Colayco): Commissioner Davide is recognized.

MR. DAVIDE: The third paragraph contains only one amendment.

MR. JAMIR: Privilege motion, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Colayco): Commissioner Jamir is recognized.

MR. JAMIR: I move to adjourn.

THE PRESIDING OFFICER (Mr. Colayco): Is there any objection?

ADJOURNMENT OF SESSION

THE PRESIDING OFFICER (Mr. Colayco): Considering that I see fatigue lines on faces and considering the body worked up to midnight last night, I think the motion to adjourn is approved.

MR. RAMA: Until nine o'clock tomorrow morning.

THE PRESIDING OFFICER (Mr. Colayco): The session is adjourned until nine o'clock tomorrow morning.

It was 6:44 p.m.

[*] Appeared after the roll call.

[*] See Appendix.

[**] See Appendix. (Editor's Note: Not provided in the Appendices.)

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